TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 944.

LEIBEL FINCUSOV GLUCKSMAN, APPELLANT,

vs.

WILLIAM HENKEL, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MARCH 6, 1911.

(22,565.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 22, 1911.

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1 To the Circuit Court of the United States for the Southern District of New York:

The petition of Leibel Pincusov Glucksman respectfully shows:

First. Your petitioner is imprisoned and restrained of his liberty in the County Jail of the County of New York, in the City and State of New York, in the custody of William Henkel, Marshal of the United States for the Southern District of New York, by virtue of a warrant dated December 22nd, 1910, issued by Thomas Alexander, Esq., United States Commissioner for the Southern District of New York and Commissioner duly authorized by the District Court of the United States for the Southern District of New York, and also Commissioner appointed under the laws of the United States concerning the extradition of fugitives from justice of a foreign government under a Treaty or convention between this and any foreign government, a copy of which warrant is hereto annexed and marked "A."

Second. Your petitioner further shows that said warrant was issued by the aforesaid United States Commissioner upon a claim purporting to have been made by Vladimar M. Yourieff, the Imperial Russian Vice Consul at the City of New York a copy of which complaint is hereto annexed and marked "B."

Third. That the aforesaid complaint is insufficient in law upon the face thereof and does not state facts sufficient to create jurisdiction for the issuance of the aforesaid warrant and for the detention of your petitioner; that it does not state any facts which show that your petitioner has been guilty of any offense within the provisions of any extradition treaty between the United States of America and the Russian Empire.

Fourth. That there has been no evidence of criminality of the petitioner and no evidence at all that your petitioner has committed any of the crimes or offenses set up in said complaint, and
2 that the warrant or commitment issued by said Commissioner has been issued wholly without jurisdiction and without any authority of law, and that your petitioner is therefore held and restrained of his liberty without any authority of law.

Fifth. That your petitioner has duly objected to the jurisdiction of said Commissioner and to the proceedings under said warrant and complaint and demanded that he be discharged and released from custody, and that said warrant be vacated and set aside.

Sixth. That your petitioner is informed by counsel and verily believes it to be true that his imprisonment and detention as aforesaid is illegal, that the aforesaid warrant is wholly void, that the aforesaid complaint states no jurisdictional facts to warrant his imprisonment and detention, that your petitioner's restraint of his liberty constitutes a deprivation of your petitioner's liberty without due process of law.

Wherefore your petitioner prays that Writs of Habeas Corpus and Certiorari issue directed to the persons having your petitioner in custody, commanding them to produce the body of the petitioner before this Court forthwith, and that they return all proceedings against

your petitioner to this Court for such action thereon as may be proper in the premises.

L. P. GLUCKSMAN, *Petitioner.*

CHARLES DUSHKIND,
Attorney for Petitioner.

Office and P. O. Address, 5 Beekman Street, New York City.

3 ***Verification.***

STATE OF NEW YORK,
County of New York, ss:

Leibel Pincusov Glucksman being duly sworn says that he is the petitioner in the above entitled action, that he has heard read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, *as* as to those matters he believes it to be true.

L. P. GLUCKSMAN.

Sworn to before me this 18th day of January, 1911.

LOUIS WEINBERGER,
Commissioner of Deeds, New York City.

4 (Endorsed:) Circuit Court of the United States Southern District of New York. In the matter of the petition of Leibel Pincusov Glucksman for Writs of Habeas Corpus and Certiorari. (Original.) Petition. Chas. Dushkind Attorney for Petitioner Temple Court 5 Beekman Street, Manhattan, New York. U. S. Circuit Court, Southern District N. Y. Filed Jan. 19, 1911. John A. Shields.

5 NOTE.—Exhibit "A", Warrant of Arrest and Exhibit "B", Complaint, copies of which were attached to the petition are set forth in full at pages — and -- of the record.

6 The President of the United States of America to William Henkel, Marshal of the United States for the Southern District of New York, Greeting:

We command you that you have the body of Leibel Pincusov Glucksman held and detained by you under the name of Leyba alias Lewitt Gliksman and by you imprisoned as it is said, together with the time and cause of such imprisonment and detention by whatsoever name the said Leibel Pincusov Glucksman may be called or charged before a Term of the Circuit Court of the United States for the Southern District of New York to be held in the Post Office Building in the City, County and State of New York on the 20th day of January, 1911, at the opening of the Court on that day to do and receive what shall then and there be considered, concerning said Leibel Pincusov Glucksman and have you then and there

this writ, and that at the same time you return all proceedings taken against the said Leibel Pincusov Glucksman.

Witness Hon. Edward Douglass White, Chief Justice of the United States, the 19th day of January, 1911.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

Charles Dushkind, Attorney for Petitioner, Office and P. O. Address, 5 Beekman Street, New York City.

7 Endorsed: Circuit Court of the United States, Southern District of New York. In the Matter of Leibel Pincusov Glucksman for Writs of Habeas Corpus and Certiorari. Original Writ Habeas Corpus. Chas. Dushkind, Attorney for Petitioner, Temple Court, 5 Beekman Street, Manhattan, New York.

Let the Within Writ Issue Dated N. Y. January 19, 1911. Learned Hand, U. S. C. J. U. S. Circuit Court, Southern District N. Y. Filed Feb. 6, 1911. John A. Shields, Clerk.

In obedience to the within writ of Habeas corpus, signed by the Hon. Learned Hand, U. S. Judge, I now produce the body of the within named Leibel Pincusov Glucksman held and detained by me under the name of Leyba alias Lewitt Gliksman, together with warrant to Apprehend and Final Commitment issued by Thomas Alexander, United States Commissioner in Extradition Cases, before the United States Circuit Court.

WILLIAM HENKEL.
U. S. Marshal, S. D. N. Y.

Dated, New York, January 20th, 1911.

8 *Warrant of Arrest.*

The President of the United States of America to any Marshal of the United States for the Southern District of New York or for any district of the United States:

Whereas, complaint has been made on oath under the Convention between the United States of America and the Empire of Russia for the extradition of criminals, signed at Washington, March 16/28, 1887, ratifications exchanged at St. Petersburg, April 9/21, 1893, and proclaimed June 5, 1893, before me, Thomas Alexander, a United States Commissioner, duly authorized and empowered to perform all the duties of such commissioner throughout the Southern District of New York, and duly and specially authorized by the District Court of the United States of America, held in and for the Southern District of New York, by which Court, I was duly appointed United States Commissioner to take cognizance of all applications for extradition, pursuant to Title 66 of the Revised Statutes of the United States.

That the said Leyba alias Lewitt Gliksman, a subject of the Empire of Russia, and being a fugitive from justice, and now within the United States of America, is charged with the commission, during

the year 1910, at Lodz, Russia, of the crimes of forgery and the utterance of forged papers, as mentioned and provided for in the aforesaid Convention between the United States of America and the Empire of Russia, and that such crimes so charged would constitute the crimes of forgery and the utterance of forged papers, if committed within the Southern District of New York, or within any District of New York, or within the United States.

Now, therefore, we Command you forthwith to take him, the said Leyba alias Lewitt Gliksman, and bring him before me the Commissioner in the State, City and County of New York at the Post Office Building, in the Southern District of New York, or before any Justice of the Supreme Court of the United States, or any
9 Judge of the Circuit or District Courts of the United States, or any Judge of a Court of Record of general jurisdiction or a Commissioner especially appointed to execute the provisions in Title 66 of the Revised Statutes of the United States, in the Southern District of New York, or in any District of New York, or District of the United States, in which the accused may be found in order that the evidence of the criminality of him the said Leyba alias Lewitt Gliksman may be heard and considered, and if deemed sufficient to sustain the charges that the same may be certified together with a copy of all the proceedings to the Secretary of State, that a warrant may issue for his surrender pursuant to said convention.

Witness my hand and official seal, this 22nd day of December, One thousand nine hundred and ten, at the City of New York, in the County of New York, in the Southern District of New York.

[SEAL.] THOS. ALEXANDER,
United States Commissioner Duly and Specially Appointed under Title 66 of the Revised Statutes of the United States.

10 Received this warrant on the 23rd day of Dec. 1910, at New York City and executed the same by arresting the within named Lewitt Glicksman at New York City on the 23rd day of Dec. 1910 and have his body now in Court, as within I am commanded

WM. HENKEL.
U. S. Marshal.

Prisoner arraigned, examination demanded and proceeded with; adjourned to Dec. 28th at 11 A. M. Prisoner committed to custody of Marshal.

N. Y., Dec. 23/10.

THOS. ALEXANDER
U. S. Commissioner & Comm'r, etc.

Adjourned to Jan'y 3 at 2 P. M.
N. Y., Dec. 28/10.

THOS. ALEXANDER,
U. S. Commissioner & Comm'r, etc.

Adjourned to Jan'y 10th at 10 A. M.
N. Y., Jan'y 3/10.

THOS. ALEXANDER,
U. S. Comm.

Adjourned to 13th inst. at 10 A. M.
N. Y., Jan'y 10/11.

THOS. ALEXANDER,
U. S. Com.

Adjourned to 17th inst. at 12 M.
N. Y., Jan'y 13/11.

THOS. ALEXANDER,
U. S. Com.

11 (Endorsed:) U. S. Circuit Court, Southern District N. Y., Filed Feb. 6, 1911, John A. Shields, Clerk.

12 In the Matter of the Application for the Extradition of LEYBA alias LEWITT GLIKSMAN under the Treaty Between the United States and the Empire of Russia.

To the United States Marshal for the Southern District of New York and to His Deputies or either of them:

Whereas a warrant for the apprehension of Leyba alias Lewitt Gliksman, under the treaty between the United States and Russia, was issued on the 22nd day of December, 1910, charging him with the crimes of forgery and utterance of forged paper in the City of Lodz, Empire of Russia, and whereas the said Leyba alias Lewitt Gliksman was afterwards arrested thereon and brought before me, and the said Leyba alias Lewitt Gliksman having been duly informed of his rights and being represented by counsel demanded an examination, and an examination having been had before me, the said Leyba alias Lewitt Gliksman was committed for extradition for the crimes of forgery and utterance of forged paper in the City of Lodz, Empire of Russia, the crimes set forth in the complaint herein.

In order therefore that the proceedings may be certified to the Secretary of State, I hereby commit the said Leyba alias Lewitt Gliksman to the custody of the United States Marshal for the Southern District of New York to be by him held in the proper jail until a warrant for the surrender of the said Leyba alias Lewitt
13 Gliksman shall issue according to the stipulations of the treaty, or he shall be otherwise dealt with according to law.

In witness whereof I have hereunto subscribed my name and affixed my seal this 19th day of January, 1911.

[SEAL.] THOS. ALEXANDER,
U. S. Commissioner for the Southern District of New York and Duly Appointed and Authorized by the District Court of the United States for the said Southern District to Act as Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of a Foreign Country under a Treaty Between the United States and any Foreign Country.

14 The President of the United States to Thomas Alexander, U. S. Commissioner for the Southern District of New York, and Commissioner duly authorized by the District Court of the United States for the Southern District of New York, and also Commissioner appointed under the laws of the United States concerning the extradition of fugitives from justice, etc., Greeting:

We command you that you return before a Stated Term of the Circuit Court of the United States for the Southern District of New York to be held in the Post Office Building, in the Borough of Manhattan, City of New York, on the 20th day of January, 1911 at the opening of the court on that day all proceedings had and taken before you against Leyba alias Lewitt Gliksman under and pursuant to a Warrant issued by you on the 22nd day of December, 1910 upon a complaint purporting to have been made by Vladimar M. Yourieff, Imperial Russian Vice Consul in the State of New York, and also all proceedings taken before you in said matter and to — and receive what shall then and there be considered concerning the said matter and have you then and there this Writ.

Witness, Honorable Edward Douglass White, Chief Justice of the United States, the 19th day of January, 1911.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

Charles Dushkind, Attorney for Petitioner, Office & P. O. Address, 5 Beekman Street, New York City.

15 (Endorsed:) Circuit Court of the United States Southern District of New York. In the matter of the Petition of Leibel Pincusov Glucksman for Writs of Habeas Corpus and Certiorari. Original. Chas. Dushkind, Attorney for Petitioner, Temple Court 5 Beekman Street, Manhattan, New York. Let the Within Writ Issue. Dated N. Y. January 19, 1911. Learned Hand, U. S. J U. S. Circuit Court, Southern District of New York. Filed Feb. 6, 1911. John A. Shields, Clerk.

16 In the Matter of the Application for the Extradition of LEYBA alias LEWITT GLIKSMAN under the Treaty Between the United States and the Empire of Russia.

To the District Court of the United States for the Southern District of New York:

I, Thomas Alexander, United States Commissioner for the Southern District of New York and duly appointed and authorized to act as commissioner under Title 66 of the United States Revised Statutes in obedience to the foregoing writ of certiorari, do hereby certify that the papers hereto annexed and returned herewith contain the record of the proceedings had before me in the above entitled matter.

Dated, New York, January 19, 1911.

THOMAS ALEXANDER,
U. S. Commissioner, Southern District of New York.

Endorsed: United States Circuit Court, Southern District of N. Y Filed, February 6, 1911. John A. Shields, Clerk.

17 *Certificate.*

DEPARTMENT OF STATE:

To any Justice of the Supreme Court of the United States; any Judge of the Circuit or District Courts of the United States in any District; any Judge of a Court of Record of General Jurisdiction in any State or Territory of the United States, or to any Commissioner specially appointed to execute provisions of Title LXVI of the Revised Statutes of the United States, for giving effect to certain treaty stipulations between this and foreign Governments for the apprehension and delivering up of certain offenders:

Whereas, pursuant to existing treaty stipulations between the United States of America and Russia for the mutual delivery of criminals, fugitives, fugitives from justice in certain cases. His Excellency Baron Rosen, Ambassador Extraordinary and Plenipotentiary of Russia, accredited to this Government has made application in due form, to the proper authorities, thereof, for the arrest of Leyba, alias Lewitt Glicksman, charged with the crime of utterance of forged papers and alleged to be a fugitive from the justice of Russia and who is believed to be within the jurisdiction of the United States and

Whereas, it appears proper that said Leyba, alias, Lewitt Glicksman should be apprehended and the case examined in the mode provided by the laws of the United States aforesaid. Now, Therefore, to the end that the above named officers, or any of them, may cause the necessary proceedings to be had, in pursuance of said laws, in order that the evidence of the criminality of the said Leyba alias Lewitt Glicksman may be heard and considered and, if deemed sufficient to sustain the charge, that the same may be certified, together with a copy of all the proceedings, to the Secretary of State, that a warrant may issue for his surrender, pursuant to said Treaty stipulations I certify the facts above recited.

In Testimony Whereof, I have hereunto signed my name and caused the seal of the Department of State to be affixed. Done at the City of Washington, this 1st day of October, A. D. 1910 and of the Independence of the United States the 135th.

[Seal Department of State, United States of America.]

ALVEY A. ADEE,
Acting Secretary of State.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Feb. 6, 1911. John A. Shields, Clerk.

Thomas Alexander, United States Commissioner, duly authorized and empowered to perform all the duties of such commissioner throughout the Southern District of New York, and duly and specially authorized by the District Court of the United States of America, held in and for the Southern District of New York, by which Court he was duly appointed United States Commissioner to take cognizance of all applications for extradition pursuant to Title 66 of the Revised Statutes of the United States.

UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, ss:

Vladimar M. Yourieff being duly sworn, deposes and says that he is the Imperial Russian Vice Consul at the City of New York in the State of New York, and is now Acting Imperial Russian Consul General, and is recognized as such by the Government of the United States.

He alleges, complains and charges on information and belief:—

First. That Leyba alias Lewitt Gliksman is and was at all the times hereinafter mentioned a subject of the Empire of Russia.

Second. That in or about the month of June, 1910, at Lodz in the Empire of Russia, with intent to injure and defraud, said Leyba alias Lewitt Gliksman did falsely and feloniously make, forge and counterfeit and cause and procure to be falsely made, forged and counterfeited, the signature of one Tugendriach to a certain Bill of Exchange for the sum of one hundred (100) roubles; that the said crime constitutes the crime of forgery within the meaning of the Convention of the United States of America, and the Empire of Russia, for the extradition of criminals, signed at Washington, March 16/28, 1887, ratifications exchanged at St. Petersburg
19 April 9/21, 1893, and proclaimed June 5, 1893, and would constitute the crime of forgery if committed within the Southern District of New York, or within any District of New York, *or within any District of New York*, or within the United States.

Third. That in or about the month of June, 1910, at Lodz in the Empire of Russia, with intent to injure and defraud the said Leyba alias Lewitt Gliksman did falsely, fraudulently and feloniously utter, offer and dispose of as true, a certain Bill of Exchange for one hundred (100) roubles to one Bierenzweig and by reason of such utterance, offer and disposal said Gliksman did obtain and receive from said Bierenzweig goods, wares and merchandise of the value of one hundred (100) roubles; that such crime constitutes the crime of the utterance of forged papers within the meaning of the convention of the United States of America and the Empire of Russia for the extradition of criminals signed at Washington, March 16/28, 1887, ratifications exchanged at St. Petersburg April 9/21, 1893 and proclaimed June 5, 1893, and would constitute the crime of uttering forged papers, if committed within the Southern District of New York, or within any District of New York, or within the United States.

Fourth. That in or about the month of June, 1910, at Lodz in the Empire of Russia, with intent to injure and defraud, said Leyba alias Lewitt Gliksman did falsely and feloniously make, forge and counterfeit and cause and procure to be falsely made, forged and counterfeited, the signature of one Tugendriach to a certain Bill of Exchange for the sum of one hundred (100) roubles; that the said crime constitutes the crime of forgery within the meaning of the Convention of the United States of America, and the Empire of Russia, for the extradition of criminals, signed at Washington, March 16/28, 1887, ratifications exchanged at St. Petersburg April 9/21, 1893, and proclaimed June 5, 1893, and would constitute the crime of forgery if committed within the Southern District of New York, or within any District of New York, or within the United States.

20 Fifth. That in or about the month of June, 1910, at Lodz in the Empire of Russia, with intent to injure and defraud the said Leyba alias Lewitt Gliksman did falsely, fraudulently and feloniously utter, offer and dispose of as true, a certain Bill of Exchange for one hundred (100) roubles to one Traidenraich and by reason of such utterance, offer and disposal said Gliksman did obtain and receive from said Traidenreich goods, wares and merchandise of the value of one hundred (100) roubles; that such crime constitutes the crime of the utterance of forged papers within the meaning of the convention of the United States of America and the Empire of Russia for the extradition of criminals signed at Washington, March 16/28, 1887, ratifications exchanged at St. Petersburg April 9/21, 1893 and proclaimed June 5, 1893, and would constitute the crime of uttering forged papers, if committed within the Southern District of New York, or within any District of New York, or within the United States.

Sixth. That in or about the month of June, 1910, at Lodz in the Empire of Russia, with intent to injure and defraud said Leyba alias Lewitt Gliksman did falsely and feloniously make, forge and counterfeit and cause and procure to be falsely made, forged or counterfeited, the signature of one Tugendriach to a certain Bill of Exchange for the sum of one hundred (100) roubles; that the said crime constitutes the crime of forgery within the meaning of the Convention of the United States of America, and the Empire of Russia, for the extradition of criminals signed at Washington, March 16/28, 1887, ratifications exchanged at St. Petersburg April 9/21, 1893, and proclaimed June 5, 1893, and would constitute the crime of forgery if committed within the Southern District of New York, or within any District of New York, or within the United States.

Seventh. That in or about the month of June, 1910, at Lodz in the Empire of Russia, with intent to injure and defraud the said Leyba alias Lewitt Gliksman did falsely, fraudulently and feloniously utter, offer and dispose of as true, a certain Bill of Exchange for one hundred (100) roubles to one Selinsky and by reason

21 of such utterance, offer and disposal said Gliksman did obtain and receive from said Selinsky goods, wares and mer-

chandise of the value of one hundred (100) roubles; that such crime constitutes the crime of the utterance of forged papers within the meaning of the convention of the United States of America and the Empire of Russia for the extradition of criminals signed at Washington, March 16/28, 1887, ratifications exchanged at St. Petersburg, April 9/21, 1893, and proclaimed June 5, 1893 and would constitute the crime of uttering forged papers, if committed within the Southern District of New York, or within any District of New York, or within the United States.

Eighth. That the crimes enumerated in paragraphs second, third, fourth, fifth, sixth and seventh were committed within the territory of the Empire of Russia and that said Leyba alias Lewitt Gliksman is charged therein with the commission of each of said crimes and has been duly and legally indicted for each of said crimes by the Court of Competent Jurisdiction.

Ninth. That the said Leyba alias Lewitt Gliksman is a fugitive from the Justice of the Empire of Russia and is now within the territory of the United States of America.

Tenth. That a certificate has been issued by the Secretary of State of the United States that application has been made by the Imperial Government of Russia for the provisional arrest of said Leyba alias Lewitt Gliksman.

Eleventh. That the sources of deponent's information and the grounds of his belief as to the matters hereinabove stated on information and belief are derived from the certificate issued by the Secretary of State and from duly authenticated copies of papers received by him from the duly constituted authorities of the Empire of Russia.

Wherefore, the said complainant prays that a warrant may be issued for the apprehension of the said Leyba alias Lewitt Gliksman and that he may be brought before a Justice of the Supreme Court of the United States or a Judge of the Circuit of District Courts of the United States or a Judge of a Court of Record of General
22 Jurisdiction or a Commissioner especially appointed to execute the provisions in Title 66 of the Revised Statutes of the United States in the Southern District of New York to the end that upon the production of evidence sufficient to sustain the charges he may be held for extradition to Russia in accordance with the Treaty and Statutes in such case made and provided.

VLADIMAR M. YOURIEFF.

Sworn to before me this 22nd day of December, 1910.

THOS. ALEXANDER.
United States Commissioner and Commissioner under Title 66 of the Revised Statutes of the United States.

23 (Endorsed:) In the matter of the Application of Vladmir M. Yourieff, Imperial Russian Vice Consul General and Acting Consul General for the Extradition of Leyba alias Lewitt Glicksman. Complaint. Coudert Brothers, Attorneys for Demanding

Government. 2 Rector Street, Borough of Manhattan, New York. Filed Dec. 22/10. U. S. Circuit Court Southern District N. Y. Filed Feb. 6, 1911. John A. Shields, Clerk.

24 UNITED STATES OF AMERICA,
Southern District of New York:

In the Matter of the Application of Vladimir M. Yourieff, Imperial Vice-Consul General and Acting Consul General for the Empire of Russia, for the Extradition of Leyba alias Lewitt Glicksman.

Proceedings Before Thomas Alexander, Esq., United States Commissioner Specially Designated to Act in Cases for the Extradition of Fugitives from This to Foreign Countries, at His Office in the U. S. Court House and Post Office Building.

NEW YORK, *December 23rd*, 1910.

Present:

Messrs. Coudert Brothers, by Charles A. Conlon, for the Demanding Government.
Mr. Charles Dushkind, Atty. for the Prisoner, and
The Prisoner, in person.

The prisoner was arraigned and his rights explained to him.

Mr. DUSHKIND: The prisoner demands an examination; but before that I move to dismiss the complaint upon which the warrant is issued upon the ground that the complaint fails to state the facts necessary to constitute a crime within the definition or meaning of the Treaty between the Demanding Government and the United States. I further move to dismiss the complaint upon the
25 ground that the Demanding Government had already filed a complaint against the same prisoner charging him with a crime arising out of the same transaction involved in the papers now before the Commissioner.

The COMMISSIONER: The motion is denied.

Mr. DUSHKIND: I take an exception.

Mr. CONLON: Counsel for the Demanding Government asks the Counsel for the Accused whether the Accused denies whether he is the person mentioned in the proceeding.

Mr. DUSHKIND: Accused declines to make any statement.

Mr. CONLON: I think I will introduce the depositions and rulings duly authenticated by the United States Ambassador at St. Petersburg, charging the Accused with the commission of the crime of forgery and with the utterance of forged papers as set forth in the complaint.

Mr. DUSHKIND: I move to strike out the statement of Counsel with respect to the alleged fact that the papers offered in evidence charge the prisoner with a crime of any kind, as the papers speak for themselves. I object to the admission of the papers in evidence on

the ground that they are defective, improperly executed and
26 improperly authenticated.

Mr. CONLON: I ask counsel for the Accused to state in what respect they are not properly authenticated.

The COMMISSIONER: As the certificate of the Ambassador seems to be in shape, I therefore accept the papers in evidence subject to any objection you may interpose as to said documents.

Mr. DUSHKIND: Exception taken.

Mr. CONLON: I ask your Honor to open the envelope in which is contained a photograph of the Accused, that is concealed in the papers there.

(The Commissioner opens said envelope.)

Mr. CONLON: May I have the papers and photograph marked?

(Papers including photograph marked collectively in evidence as Exhibit A of this date.)

Mr. DUSHKIND: I furthermore object—specially object to the photograph being admitted in evidence upon the ground that there is nothing here to show in the papers or any other way that this photograph is a photograph of the prisoner, and there is nothing here to identify this photograph with the accused; and furthermore upon the ground that the description of the accused contained
27 in the papers does not seem to tally and compare at all with the prisoner at Bar.

Mr. CONLON: I ask to have noted on the record, that the photograph to which objection is now taken is the photograph which was included with the papers.

The COMMISSIONER: I reserve my ruling upon the last objection

Mr. CONLON: I ask to have marked for identification the sworn translation of the deposition and papers authenticated by the Ambassador of the United States at St. Petersburg.

(Papers marked for identification Exhibit B of this date.)

ALPHONSE P. RINCK, being first duly sworn testified as follows:

Direct examination by Mr. CONLON:

Q. What is your business?
A. Detective.
Q. How long have you been a detective?
A. 17 years, going on 18—it will be 18 next August.
Q. With whom are you connected?
A. Pinkerton's National Detective Agency.
28 Q. I ask you to look at the Accused and state when, if at all, you first saw him?
A. I first saw him on the Steamship Rhine when he was put under arrest upon his arrival in this country.
Q. And what time was that?
A. I couldn't say but it is in my notes and if you don't object—(refers to a book) August 3rd, 1910.

Q. What was the appearance of the Accused when you saw him then?

A. I believe he wore a beard.

Q. And how many times have you seen him since?

A. Four times.

Q. When did you see him the second time?

A. When he was discharged from Ellis Island.

Q. And his appearance was then the same as when you saw him first?

A. Yes, when he arrived, yes.

Q. And when did you see him the third time?

A. About three weeks later and then his beard was cut and he only wore a goatee.

Q. When did you see him the next time?

A. The next time I saw him was the day before he was arrested on Saturday—Friday two weeks ago.

29 Q. What was his appearance then?

A. Then as he is today, without a goatee or a beard.

Q. Simply wearing a moustache?

A. Yes.

Q. I show you a photograph attached to the papers in this case and ask you if that is, in your opinion, a likeness of the Accused.

Mr. DUSHKIND: I object to the question as incompetent, irrelevent and immaterial.

The COMMISSIONER: Objection overruled.

Exception.

The WITNESS: Yes sir, that is how he appeared when I first arrested him.

Q. Is that the way he appeared upon arrival in this country?

A. Yes sir, his beard wasn't quite as full, just cut the least little bit; I am a photographer by trade, have been in the business 20 years——

Mr. DUSHKIND: You are not supposed to answer the question unless you are asked; don't volunteer anything please.

Q. Did you have any conversation with the Accused upon the occasion of his arrival in this country?

A. Yes sir.

Q. In what language was that conversation?

A. In German?

30 Q. State as near as you recollect what you said to the Accused and what the Accused said to you?

A. When he was put in charge of the Commissioners I asked whether there was any political crime—whether he had been mixed up in politics or anything on the other side and he intimated he had not.

Mr. DUSHKIND: I move to strike out what he intimated.

The WITNESS: He said he had not been mixed up in any political crime; I asked whether he had taken any part in politics and he said

he had not; then I asked him what business he had been in on the other side and he said he had been in the leather business; and I asked him from what point he came and he told me he came from the point that our cable asked for.

Mr. DUSHKIND: I move to strike it out, last three lines.
The COMMISSIONER: Motion granted.

Q. State what point?
A. Can I refer to my notes.
The COMMISSIONER: Oh, yes.
The WITNESS (doing so): I have the original notes from the cable that I arrested him on; they were made at the time. He told me he came from Lodz; I also asked how he happened to
31 come under the name of Gluksman and he told me—well that must be a typographical error because he said his name was Lewek Glicksman. He also gave me the address of a brother-in-law or some relative of his called Max Spiro at 1384 Prospect Avenue and his brother Harry Glicksman and gave his address as number 310 East 4th Street. He said those were relatives that he came to visit.

Q. What further conversation did you have with him upon arrival or have you stated all the conversation?
A. Yes, about practically all; he told me at that time that he had some enemies of his on the other side who are bringing these charges against him.
Q. What else did he refer to?
A. I remember I accused him of having absconded with money and asked how much money he had with him and he said he only had $400 with him, that's all. I was under the impression he had 7500 rubles.
Q. Do you know under what name he was entered on the list of passengers?
A. Under the name of Gluksman; he gave his name at Ellis Island——

Mr. DUSHKIND: I move to strike out what he did at Ellis
32 Island.
The COMMISSIONER: Motion granted.

Q. Were you present when he appeared before the Board of Special Inquiry?
A. No.
Q. Upon the second occasion that you saw him did you have any conversation with him?
A. No sir.
Q. Upon the 3rd occasion that you have referred to did you have any conversation with him?
A. No.
Q. Upon the 4th occasion did you have any conversation with the accused?
A. Yes.
Q. Where was that?
A. On Avenue B and 11th Street I believe it was.

Q. Do you remember when?
A. On Saturday December 3rd.
Q. Who was present at that time?
A. Deputy Marshal Reid.
Q. Who else?
A. Mr. Glicksman and his brother and myself.
Q. State the conversation, what you said to the Accused and what the Accused said to you?
A. We shook hands and he said that he remembered me and also Mr. Reid who had seen him when he came from Ellis Island—he shook hands with him, and we then told him that he was
33 under arrest, and as we walked through the street his brother first offered the Marshal some money—I don't know what it contained—a small roll of money and he said if he would let his brother off we could have the money and he told him—the Marshal told him in my presence, he says; don't see me; I cannot do anything for you and he sent him over to me; I says I don't want anything, the man is under arrest I have nothing further to do with him.

Mr. DUSHKIND: I move to strike out that his brother did.
Motion denied.
Exception.

The WITNESS: Afterwards Glicksman,—the brother afterwards offered me $10; I told him no.

Mr. DUSHKIND: Strike it off.

The WITNESS: Mr. Glicksman then gave his brother $50 and he offered it to me and I refused, and the Marshal also told him that if he insisted upon offering money that he would put him under arrest; so Glicksman himself told me, you are the only man that can fix that; the Marshal has nothing to do with it; you take the
34 money and let me go, so I told him I couldn't do it and if he insisted upon doing that we would tell the Commissioner when we brought him down.
Q. Did you have any further conversation with the Accused?
A. Yes, we talked about various different things; about the trouble that he has had, and he told me I should be lenient with him and let him out of this thing and I told him there is nothing could be done in that matter at all and that he would have to appear before the Commissioner and if he could make any arrangement with the Russian Consul they might be lenient with him.
Q. Did you tell him he had been charged with the commission of any crime?
A. Yes, I told him that he was charged with committing forgery and he denied it at that time and said he did not commit forgery.
Q. Did he admit it at any time?
A. No he never admitted having committed any crime.
Q. I ask you to read the description contained in the papers offered in evidence of the Accused, and state whether in your opinion the description therein contained is a correct description of the Accused?

Mr. DUSHKIND: That is objected to upon the ground that
35 it is incompetent, immaterial and irrelevant; the description speaks for itself; the witness is not qualified as an expert. The Prisoner is here and the Court is as competent as the witness is as to whether the description is that of the Prisoner or not.

The COMMISSIONER: Objection sustained.

Q. In your experience as a detective have you been called upon to locate or discover various persons by means of descriptions and photographs?

A. Yes sir.

Q. Has that occurred frequently?

A. Very frequently.

Q. And in your opinion does the accused answer the description which is shown to you?

Mr. DUSHKIND: Same objection.

Overruled.

Exception.

The WITNESS: With the exception of his age I believe; he appears to be a younger man than 45 years of age.

Cross-examination.

By Mr. DUSHKIND:

Q. You conversed with the Prisoner altogether in the German language?

A. A very good scholar of the German language.

36 Q. You are a good scholar?

A. Yes sir, I read it and write it.

Q. You haven't spoken any other language to him but the German Language?

A. The German Language and also he speaks English——

Q. Do you mean to say the Prisoner speaks English?

A. Yes, understands it very well, you would be astonished; he told me when he arrived he had studied English on the other side.

Q. Do you mean to say that he told you that he had studied English?

A. Yes sir, said he had studied some.

Q. Did you talk to him in English?

A. I talked English in his presence and he understood it.

Q. Did he answer you in English?

A. No.

Q. How did you talk to his brother?

A. In English and in German.

Q. What kind of a looking man was his brother?

A. A little short man I should judge him to be about 33 years of age, 5 ft. 5 high, smooth face and dark complexion.

Q. You say his brother offered you money?

A. Yes.

Q. Also offered some money to the Marshal?

A. Yes.

Q. You knew as a detective that offering you money or to the Marshal money, to discharge a prisoner means offering a
37 bribe didn't you?

A. Yes.

Q. And you have made no report of that after you had arrested him, did you?

A. I have no authority to arrest anybody.

Q. Do you mean to say that he had offered a bribe to the Marshal and the Marshal had—to the Marshal to let him go?

A. Yes sir.

Q. How did he offer you that bribe, in what language?

A. In English.

Q. What did he say to you?

A. He says: Let my brother go and you can have this money.

Q. Said that in English?

A. Yes.

Q. Did he say that in the presence of the Marshal?

A. We were all together; certainly he offered it to the Marshal first and the Marshal refused it.

Q. Did he tell you how much money there was?

A. Not the first time, the second time he told me that it was 10 and afterwards he got $50 of his brother and he wanted to give me the whole thing and I told him to go away or else I would make a charge against him; we took pity on the Prisoner; both of us were sorry to have to arrest him.

38 Q. There were four of you then, you and the Marshal, and the Prisoner and the Prisoner's brother?

—. Yes.

Q. How were you walking along in one row?

A. Yes, one row.

Q. How was that?

A. Continually changing positions; first he would be on the other side—the Marshal and I had the Prisoner between us.

Q. Between you and the Marshal?

A. Yes.

Q. Where was the brother?

A. First on the Marshal's side and then on my side; then he would go from one to another.

Q. You read some memorandum—some notes from your memorandum book?

A. Yes.

Q. Those were not notes as to the conversation that you had with Glicksman—with the Prisoner were they?

A. No, my reports show that, not these notes.

Q. The notes that you read were only instructions that you received for the correct parties?

Mr. CONLON: Objected to as incompetent, irrelevant and immaterial as not in the record.

Objection sustained.

Exception.

39 Q. When you were asked to give the conversation that you had with Glicksman—with the Prisoner rather on the steamer, you said that you would have to refresh your memory and you read notes from your memorandum book?

A. Yes.

Q. When were the figures made?

Mr. CONLON: Objected to as incompetent, irrelevant and immaterial.

Objection overruled.

The WITNESS: The notes were made when he spoke to me giving me the addresses and things of that kind; I put those notes down then and there.

Q. Now you said that he told you that he came from some town that your cable called for?

A. Yes.

Q. What did you put in your note book, what he said to you or what the cable called for?

A. I had the name that the cable called for, the town of Lodz; that is where he was supposed to come from; I asked him where he came from and he mentioned the name of Lodz.

Q. When you arrested him on the 3rd of December you said you told him that he had been charged with forgery, is that right?

A. Yes.

40 Mr. CONLON: Objected to on the ground that the witness didn't arrest the man; he was present at the time that he had been arrested.

The COMMISSIONER: Let it stand.

Mr. DUSHKIND: I will withdraw the question.

Q. When you were along with the Marshal at the time he was arrested you said that you informed him that he was charged with forgery?

A. Yes.

Q. Did you read the warrant upon which he was arrested?

Mr. CONLON: Objected to upon the ground that it is irrelevant.

Over-ruled.

The WITNESS: I did not.

Q. Did you read the complaint upon which he was arrested?

A. No.

Q. How do you know what the charge was against him?

A. Mr. Conlon told me that the charge in the papers was for obtaining money or taking away money—the proper charge must be that it was forgery, and that they had since then heard that it was forgery and they would have to have a new warrant made out for him.

41 Q. The man denied at the time and every time you spoke to him, he denied that he ever committed forgery or any other crime?

A. Yes.

Q. You haven't mentioned to him the names of any of the parties that have made complaints against him?

A. No, I did not—I don't know them.

Q. You don't know any of those names?

A. No.

Q. Nor have you said to him anything about the complaint against him besides that——

A. I think when he first arrived I asked him whether he had any of the 7500 rubles in his possession and he said all he had was $400.

Q. That is the only question you asked him relative to the alleged crime, as to whether he had 7500 rubles?

A. I asked him how much he had left of the 7500 rubles—for I knew the people on the other side said that—he said he didn't steal any money; he only had $400 in his possession.

Q. You never asked him anything relative to any note—any promissory notes or any other commercial papers; nothing was said about that?

A. Nothing at all, no.

Q. Wasn't anyone along with you when you met him at the steamer?

A. No, only the officials on Ellis Island; the Commissioners that went on board the steamer.

42 Q. You didn't go along with him to Ellis Island did you?

A. No.

Q. You don't know what statement has been made over there?

A. No.

Q. How did you identify him on the steamship?

A. From his description and from the similarity in names on the passenger list.

Q. What was the name that you had?

A. I had Glicksman—(Spells it).

Q. And the first name?

A. Lewek.

Q. That was the name given to you?

A. Yes, from the cable.

Q. What was his name on board the steamer; on the register on the steamer?

A. G-l-u-c-k——

Q. Was his first name Leweck?

A. I think it was only "L" if I am not mistaken; I am not sure; I would not be positive.

Q. Not sure about it? Don't you know how he was registered on the steamship?

A. My reports show that. I made an exact copy or transcript.

Q. Have you that in your note book?

A. I took it and put it on my original reports as soon as I

43 arrived at my office—I made it in the reports I had on the passenger list.

Q. Wasn't that made a part of your investigations, as to what his name was?

A. When he told me——

Q. Was it or wasn't it made part of your investigation?
A. Yes.
Q. Now you say you have everything in your note book, but you haven't got his name in your note book?
A. Yes, I have got his name; I have the name that he came over on the boat with on my report, it will show that; I have the right name in my note book but not the name he came on the boat with. I had already checked off the passenger list and I entered it in my report of the passenger list.
Q. Who was along with him at the time you had the conversation with him on the steamer?
A. His wife and three children.
Q. What is the first name *os* his wife; have you that in your note book.
A. I took it off from the passenger book.

Q. You testified to the conversations you had with Glicks-
44 man by reading from your note book in order to refresh your memory; now I ask you whether you have his wife's name in that note book?
A. I have not.

Objected to.

Q. Have you the ages or sizes of the children in your note book?
A. No; I didn't have them at the time but I have seen the children since and I have seen his wife since.
Q. How old a man do you *take* Glicksman is—the prisoner?
A. I should judge him to be about between 32 and 35.
Q. That is your opinion?
A. Yes.
Q. About what color of hair do you think is his?
A. He has got dark brown hair.
Q. What do you call his eyes?
A. I didn't look at his eyes.
Q. Look at them?
A. Hazel, (after having examined the prisoner's eyes).
Q. What would you call his face?
A. He has lost flesh since I saw him—when I first saw him—he has lost a great deal of flesh.
Q. Did his wife take any part in the conversation?
A. Yes.

Q. Did she say anything to you?
45 A. Yes, she says they are bad friends that are doing that on the other side.
Q. What did you tell them?
A. I told them I was awfully sorry for them in their predicament, but that they might be able to clear themselves.
Q. What charge did you tell him had been made against them?
A. I told him he had been arrested on the charge—I believe I showed them the original cable notifying the Consul here that they should be arrested.
Q. For what charge?

A. I forgot what charge there was in the cable.
Q. Don't you remember what charge?
A. No, I don't think there was any charge in the cable at all, simply detain passenger under the name Glicksman.
Q. Is that all?
A. I dare say it gave the charge, I don't remember that.
Q. Don't you remember you said you had a conversation with him in reference to the charge?
A. Was charged with absconding with 7500 rubles.
Q. Have you that cable here?
A. No, I believe that was——
46 Q. Did you have any conversation with the Prisoner when you saw him at Ellis Island, when you——
A. When he was discharged from Ellis Island.
Q. You didn't say anything at that time?
A. Yes.
Q. Did you say anything at that time to him?
A. I was glad that he was discharged and I told him so; and I says I hoped he would have good luck.
Q. You went there with a Deputy Marshal did you not?
A. Yes.
Q. You met him when he landed here at the Battery, is that right?
A. Yes.
Q. And you went with the Marshal at that time to arrest him under that warrant?
A. Yes.
Q. Is that right?
A. Yes.
Q. And you declined to arrest him, or the Marshal declined to arrest him at that time because you wouldn't identify him, is that so?
A. Yes.
Q. Under the same warrant?
A. Under the same warrant.
Q. Under the same description that is contained in the papers by which you testify now that he is the same person?
A. Yes sir.
47 Q. You refused at that time to identify him did you not?
A. Yes.
Q. And the Marshal refused to arrest him on that ground?
A. He couldn't arrest him unless I identified him.
Q. And you had the same description with you on that day?
A. Yes.
Q. What made you change your mind?
A. Our instructions were not to have him arrested if there was a different charge to be made against him—the papers were without effect or something of that kind.
Q. Did you not arest him on December 3rd on the same warrant that you had in your possession in August?
A. Yes.

Q. You—rather the Marshal refused to arrest him because you would not identify him?

A. Because of my instructions—my instructions were not to arrest him.

Q. Did you go there with the Marshal for the purpose of arresting him?

A. I did that on my own responsibility.

Q. Did you go there with the Marshal for that purpose—to arrest him?

A. Yes, I did.

Q. Did you tell the Marshal at that time that you would
48 not identify him under that description?

A. I said nothing about under that description—I told him I would not identify him, that's all.

Q. Then you subsequently, on December 3rd arrested him under that same warrant that contained the same description?

A. Yes.

Q. And which is the same description which you have testified now represents this man here, the Prisoner?

A. Yes sir, that is the Prisoner.

Redirect examination.

By Mr. CONLON:

Q. Isn't it a fact that you didn't have this description at the time the Prisoner arrived at Ellis Island which is now contained in the papers?

A. I did not.

Q. Did you ever see the papers before you went to Ellis Island?

A. I didn't see the papers until today.

Q. Is it a fact that you refused to have the man arrested because he denied the charge and you had no papers to substantiate it at that time?

A. Yes sir, that is just the proper thing; my instructions were that I should see that the papers had arrived and I was just notified before he was discharged that the papers had not arrived.

49 Q. And you therefore didn't wish to assume the responsibility?

A. Yes sir, that was my reason.

Recross-examination.

By Mr. DUSHKIND:

Q. What time do you mean, when you met him on the steamer?

A. I met him coming back——

Q. I asked you what time was this when you refused to arrest him, at the time you met him on the steamer or at the time he was discharged from Ellis Island

A. I shall explain——

Q. I don't want you to explain.

A. I didn't have the papers or the description for the man at the time of his arrival or the time of his discharge, not a thing.

Mr. DUSHKIND: I should like to ask your Honor's permission to have a further examination of the witness, as I desire to have the exact conversation that he had with the Prisoner in German, and I shall have to have an interpreter.

The COMMISSIONER: If you want to ask any questions of him on the adjourned day you can do so.

Examination adjourned to Wednesday, Dec. 28, at 11 A. M.

50 In the Matter of the Application for the Extradition of Leyba, alies LEWITT GLICKSMAN.

NEW YORK, *December 28th*, 1910.

Met pursuant to an adjournment.

Present:

The Commissioner, counsel, and the prisoner, as before.

Mr. DUSHKIND: I admit that the translation of Exhibit A, which translation is marked Exhibit B for identification, is a correct translation of the documents marked Exhibit A written in the Russian language.

It is admitted that the translation on the back of the photograph attached to Exhibit A reads as follows: "Photographic card of Leweck Pincusov Glicksman" with the signature of the Acting Magistrate and the Seal.

Mr. CONLON: I now offer in evidence, if your Honor please the sworn translation of Exhibit A.

Mr. DUSHKIND: I object to that upon the ground that
51 Exhibit A already contains a translation of the documents in question, that is to say the said Exhibit consists of the alleged original Russian documents and a translation thereof in the English language and is in evidence here, having been put in evidence by the Demanding Government; and in offering a new translation of the same documents they would be impeaching their own evidence, or attempting to modify or change their own evidence and therefore, since there is already in evidence a translation of it put into evidence by the Demanding Government, I respectfully submit that this translation should not be admitted.

Objection over-ruled.

Exception.

(Translation received and marked Exhibit B.)

Mr. CONLON: Your Honor reserved your ruling on the admission of the photograph.

The COMMISSIONER: It is already admitted under Exhibit A.

Mr. CONLON: Mr. Commissioner on page 7, referring to the objection; in your ruling did you refer to striking out the whole answer?

52 The COMMISSIONER: I supposed the objection related to the last sentence "And I asked from what point he came and he told me he came from the point that our cable asked for."

ALPHONSE P. RINCK, recalled.

Redirect examination by Mr. CONLON:

Q. Mr. Rinck on page 5 of your testimony appears the question: "What was the appearance of the accused when you saw him then? And your answer is: "I believe he wore a beard." Is that the answer you intended to make to that question?

Mr. DUSHKIND: I object to the question as improper in form, as incompetent and irrelevant; he cannot impeach his own witness.
Over-ruled.
Exception.

The WITNESS: He did have a beard.
Q. And you wish to correct your testimony to that effect?
A. If I so testified, yes.
Q. On page 21, the question was asked: "What would you call his face?" and you answered—"He has lost flesh since I saw
53 him, when I first saw him; he has lost a great deal of flesh." Is that the whole answer.

Same objection.
Same ruling.
Exception.

The WITNESS: His face was fuller and rounder when I first saw him.
Q. In what business was Mr. Glicksman, the accused engaged when you saw him in New York the third time?

Mr. DUSHKIND: Objected to as not redirect examination
Overruled.
Exception.

The WITNESS: The leather business.

Recross-examination.

By Mr. DUSHKIND:

Q. Where did you see him the third time?
A. When he entered the house that he worked for, number 93 Mercer Street.
Q. What was the name of that house?
A. Brass and something on the top floor of number 93 Mercer—one member of the firm is called Brass.
54 Q. And you say they are at 93 Mercer Street?
A. Yes.
Q. What business are they in?
A. Why I believe they make shoe tops.
Q. Are you using the word "believe" again?
A. Leather business.
Q. Did you see him in that place; did you see the accused enter that place?
A. I saw him walk in there; I followed the accused when he

entered in that place; I saw him go upstairs—saw him enter the place.

Q. You saw him enter the place, that's all you saw?

A. Yes, I saw him come out too, at night.

Q. Did you stay there and wait the whole day?

A. Yes sir.

Q. Stayed there on the premises and watched the whole day?

A. On the street.

Q. You saw him enter and you saw him leave the place?

A. Yes.

Q. That is all you saw; but you don't know what he was doing inside?

A. No, only that he worked for that firm, that's all.

Q. What time of day did you see him enter?

A. About 10 mintues after 7 in the morning.

55 Q. What time did you see him leave?

A. 5 o'clock.

Q. And that was the only occasion that you saw him there, that day?

A. Yes sir.

Q. That was the only time you watched him?

A. The only time I watched there but I watched him afterwards

Redirect examination.

My Mr. CONLON:

Q. Have you produced the original instructions which you received in regard to this cause?

A. Yes sir.

Mr. CONLON: Does counsel for the Accused wish to have them produced.

Mr. DUSHKIND: No.

(However witness produces a paper and Counsel for the Accused examines same with the consent of Counsel for the Demanding Government.)

56 JAMES REED, being first duly sworn testified as follows:

Direct examination by Mr. CONLON:

Q. What is your business?

A. Office Deputy United States Marshal.

Q. How long have you been such?

A. Six years.

Q. Do you recall visiting the Barge Office, of New York in the month of August, 1910?

A. I do.

Q. Did you have a warrant for the arrest of any person at that time?

A. I did.

Q. For whom?

A. A man by the name of Glickman—I don't recall the first name.

Q. Do you see the man present here this morning?

A. I do.

Q. Did you see him on that day?

A. I did.

Q. What was his appearance on that day?

A. He wore a beard to the best of my recollection.

Q. When did you see him afterward?

A. December 3rd.

Q. Had there been any change in his appearance?

A. He had no beard.

Q. Have you had occasion or is it part of your duty to take people into custody on descriptions or upon photographs?

57 A. My duty is to put them under arrest under identification; a man has got to be fully identified before I apprehend him.

Q. Why didn't you take him into custody on the occasion you saw him at the barge office?

A. He wasn't identified.

Q. I show you a photograph attached to Exhibit A and I ask you if, in your opinion, that is not a likeness of the man you saw on Ellis Island, about whom you have been testifying?

A. I didn't see him on Ellis Island.

Q. Upon his arrival from the Island you did?

Mr. DUSHKIND: I object to that upon the ground that it is incompetent, irrelevant and immaterial; the witness is not qualified as an expert and furthermore there is nothing in the papers to show that this photograph is a photograph of the man that has committed the alleged crime.

Over-ruled.

Exception.

The WITNESS: It looks like him.

Q. In your opinion it is one and the same man?

A. Yes.

58 Q. Did you arrest the Accused on December 3rd?

A. I did.

Q. Did you have any conversation with him at that time?

A. None whatsoever.

Q. Did you hear any conversation that he had with Mr. Rinck?

A. Well Mr. Rinck and him spoke German which I didn't understand.

Q. The whole conversation was carried on in German?

A. Yes.

Q. State what took place at the time you placed the Accused under arrest?

A. Well the defendant and another gentleman was going along on Avenue A or C—I am not sure which and the young man could speak English and he came to me and says, "I will give you $3 if you let this man go, and in a joking way I told him—I presumed

he was ignorant of the law—I referred him to Rinck, and Rinck and him had a conversation over on the other side but I didn't hear it.

Q. Did the defendant say anything to you at that time?
A. He never said a word.
Q. Said nothing to you after you placed him under arrest?
A. No.

59 Cross-examination.

By Mr. DUSHKIND:

Q. That young man spoke to you in English?
A. Yes.
Q. When you went to the Barge Office with a warrant to arrest the accused last August, Mr. Rinck went along with you, is that right?
A. Yes.
Q. That is, Mr. Rinck came up to the office here and went along with you to the Barge Office for the purpose of arresting him, is that right?
A. Well, yes that's right.
Q. And Mr. Rinck went with you right direct to the Barge Office and was with you all the time?
A. Mr. Rinck was in my company pretty much but we were separated a little bit on and off.

Mr. CONLON: The Demanding Government rests, but I would like to reserve the right if your Honor please to introduce the record taken at the time this man arrived in this country at Ellis Island. I have got to secure time since I think I would like to reserve the right to introduce it in evidence.

Adjourned to Tuesday, January 3rd, at 2 o'clock.

60 In the Matter of the Extradition of LEYBA alias LEWETT GLICKSMAN.

NEW YORK, *January* 3, 1911.

Met pursuant to adjournment.

Present:

The Commissioner.
Messrs. Coudert Brothers, by Mr. Conlon.
Mr. Charles Dushkind.
The prisoner.

RAYMOND S. LLOYD, called as a witness for the Demanding Government, being first duly sworn testified as follows:

Direct examination by Mr. CONLON:

Q. What is your occupation?
A. Stenographer and typewriter, assigned to duty as Secretary to the Board of Special Inquiry, Ellis Island Immigration Station.
Q. How long have you been there?

A. Since March 1st, 1904, with the exception of about six
61 weeks when I was at other stations of the service.

Q. Were you requested to produce the original record of the hearing in the matter of Glicksman?

A. I was instructed to make a copy of such original record.

Q. Have you done so?

A. I have.

Q. I show you a paper and I ask you if that is a true copy of the original record of the hearings in the matter of Glicksman before the Board of Special Inquiry at Ellis Island?

A. Yes sir, it is.

Q. Have you the original record on file at the Ellis Island Station?

A. I have, yes sir.

Q. Have you compared this copy which you now identify with the original on file?

A. I have.

Q. Is it a true copy of the same?

A. It is.

Q. Did you make it yourself?

A. With the exception of two sheets numbered 6 and 7. Those two sheets were copied by Secretary Lovejoy under my direction. I compared——

Q. Have you compared the copy with the original record?

A. I have.

Mr. CONLON: I offer the copy in evidence.

62 Mr. DUSHKIND: I object to the admission of this document on the ground that it is incompetent, irrelevant and immaterial, and further upon the ground that it contains alleged cablegrams from Russia, which are unidentified, not properly authenticated and unofficial, and nothing but hearsay evidence, and can have no bearing at all on this case.

The COMMISSIONER: I will receive that paper in evidence to the extent of his admission of his name and where he came from, and his business.

Mr. DUSHKIND: I take an exception.

(Paper marked Exhibit 1 of this date.)

(By Mr. CONLON:)

Q. Have you produced the original card showing the arrival of Glicksman?

A. I have not, no sir.

Q. Have you produced the original card of his arraignment before the Board of Special Inquiry?

A. I have not.

Q. Have you produced the special inquiry card, the original?

A. I have not produced the original card, no sir. The heading of the case is a copy of the card; not in entirety but so far as the name, age, nationality, name of the steamship and date of arrival is concerned, together with the name of the Inspector who
63 held the alien or aliens for special inquiry.

Cross-examination.

By Mr. DUSHKIND:

Q. The first part of this deposition on the front page right immediately after the box, that is in the form of a narrative?

A. Yes sir.

Q. That is, in other words you have made—given your own version of what he testified, is that right?

A. No sir, it is not. We have on the Board of Special Inquiry at Ellis Island what we call a set list of preliminary questions which the interpreter—you understand nearly all these cases are handled through an interpreter—we furnish that printed list giving the questions to which these are the answers. These questions are asked in every case and through the instructions from the Commissioner to the Secretaries of the Board over there we simply put down the answers for the purpose of lightening the work.

Q. But part of it is taken down in your stenographic minutes—the question with respect to that part of the testimony that I now refer to?

64 A. I beg your pardon I wasn't the secretary who took that hearing. I simply am here to testify that I made a copy of the original record over there.

Q. You didn't take down the minutes of this examination did you?

A. No, I did not.

Q. Some other stenographer took them down?

A. Yes sir.

Q. And you found that those minutes were transcribed?

A. Yes.

Q. And you made a copy from the transcript?

A. Yes, I made a copy of the permanent record on Ellis Island.

Q. From the transcript, not from the original stenographic minutes, but from the transcript?

A. Yes.

Q. But the original minutes you haven't read have you?

A. The shorthand notes, no sir.

Q. And you cannot swear as to whether the transcript was correct, can you?

A. I can only swear that I made a true copy of the typewritten transcript.

Q. You understand my question: you cannot swear as to whether the transcript was correct can you?

A. No sir, not the shorthand transcript.

Mr. DUSHKIND: I now move to strike out this Exhibit upon the ground that it appears affirmatively by the testimony of the
65 witness that he has made a copy from a transcript and not from the original minutes of shorthand writing; that he didn't take the minutes at the hearing and that he cannot swear as to whether the transcript was correctly copied from the minutes.

Mr. CONLON: It is introduced in evidence as a copy of a public record.

The COMMISSIONER (addressing the witness): Is this a copy of the original record of the testimony of these parties on file with the Commission?

A. Yes sir, it is a typewritten copy.

(By Mr. DUSHKIND:)

Q. The questions and answers of the testimony were taken down by the stenographer in shorthand writing?

A. Yes.

Q. And then it was transcribed by him in typewriting was it not?

A. Yes.

Q. And you copied, not from the shorthand, not from the shorthand but from the transcript?

A. I copied from the typewritten transcript.

Q. And you cannot swear as to whether the gentleman who had transcribed the minutes, transcribed them correctly can you?

A. No.

66 The COMMISSIONER: Motion denied.

Mr. DUSHKIND: Exception. That's all.

The COMMISSIONER (addressing Mr. Conlon): Your case?

Mr. CONLON: Yes sir.

Mr. DUSHKIND: I move to exclude from the evidence the photograph offered by the Demanding Government upon the ground that there is no testimony or proof of any kind identifying the photograph as being the picture of the man who is charged with having committed the alleged crimes—while the photograph may be a good likeness of the prisoner, it has not been identified by anyone as being the photograph of the man who committed the alleged offences, and moreover it appears affirmatively from the evidence and the documents in evidence that the photograph is not the picture of the man who is charged with having committed the alleged crimes.

I move to exclude the translation, the English translation attached to Exhibit A on the ground that it is not properly certified.

The COMMISSIONER (addressing Mr. Conlon): Have you any objection to excluding that translation?

67 Mr. CONLON: No.

The COMMISSIONER: Motion granted as to that.

Mr. DUSHKIND: I move to exclude from the evidence the translation, the English translation of the alleged Russian documents which are marked Exhibit B upon the ground that it is incompetent, and it has been offered by the Demanding Government after it had already introduced in evidence a translation and to impeach or modify its own evidence.

I move to exclude from the record Exhibit A on the ground that the papers are not properly attested upon the oath of the party producing them to be true copies of the original depositions.

I move to exclude the Exhibit A which is the Russian papers entire because it contains hearsay statements and matters of opinion and conclusions, and alleged expert opinions of unknown persons whose qualifications to give expert opinions are not proven, and fur-

thermore because the papers contain irrelevant and incompetent statements that are based merely upon rumors and suspicion, and there is no evidence or criminality to be found therein.

68 I move to exclude the deposition entitled protocol of Hyer Cashia Isaakor Zelinsky, forming a part of Exhibit A upon the grounds last stated; and I also move to exclude the affidavit or deposition entitled—protocol of Moschec Leib Jakuvor Maerov Tugendreich upon the same grounds; I also move to exclude the deposition or protocol of Judka Selamov Rirenzweig upon the same ground. I also move to exclude the affidavit or deposition entitled protocol of Binen Bezalelev Fraidenreich, upon the same ground.

I move to dismiss the complaint upon the ground that the facts therein stated are insufficient to constitute any crime within the intent and purpose of the Treaty, or any crime under the Laws of the State of New York or of the United States; and I move to discharge the prisoner on the ground there is no evidence to identify the prisoner as being the person charged with having commited the alleged crimes, but on the contrary, it appears affirmatively from the evidence in this case that the prisoner is not the person described in the papers as the man that has committed the alleged crimes.

69 I move to discharge the prisoner upon the ground that there is no evidence of criminality; that the evidence is insufficient under the Treaty and under the laws to hold him.

Adjourned to Tuesday, January 10, 1911 at 10 A. M.

70 In the Matter of LEYBA, alias LEWITT GLICKSMAN.

NEW YORK, *January 10th*, 1911.

Met pursuant to adjournment.

Present:

The Commissioner, counsel and the prisoner as before.

Adjourned to January 13th, 1911, at 10 a. m.

71 In the Matter of LEYBA, alias LEWITT GLICKSMAN.

NEW YORK, *January 13th*, 1911.

Met pursuant to adjournment.

Present:

The Commissioner, counsel and the prisoner, as before.

Mr. DUSHKIND: I move to exclude from the evidence Exhibit 1 dated January 3rd, on the ground that it is absolutely and unquestionably incompetent evidence.

I now move to dismiss the complaint because the complaint is insufficient in law upon the face thereof and furthermore because the complaint is based wholley upon information and belief, the deponent stating that the source of his information and the

72 grounds for his belief are derived from certain documents and the documents referred to are not annexed to the complaint and are not made a part thereof.

I move to discharge the prisoner on the ground that the warrant was issued by the Commissioner without jurisdiction inasmuch as the Commissioner had no power or authority to issue a warrant based entirely upon the complaint upon information and belief, and upon the ground that the Commissioner had no power to issue the warrant because the complaint fails to set forth facts sufficient to constitute a crime within the meaning of the Treaty of the Laws of the State of New York, and because the complaint is entirely insufficient in law.

Adjourned to Tuesday, January 17th, 1911, at 12 M.

73 In the Matter of Extradition of LEYBA, alias LEWITT GLICKSMAN.

NEW YORK, *January 17th*, 1911.

Met pursuant to adjournment.

Present:

The Commissioner and counsel as before and the prisoner.

The Commissioner rules upon the objection set forth on page 4 as to the admissability of the photograph in evidence, that the said objection be overruled.

Mr. DUSHKIND: An exception.

To the objection on page 43 as to the admissability of the said photograph, said objection be overruled.

Mr. DUSHKIND: An exception.

To the objection on page 43 as to the admissability of the English translation attached to Ex. A, that the said objection be sustained.

Mr. CONLON: An exception.

74 To the objection set forth on page 44 that the English translation to Exhibit B be excluded, said objection is overruled.

Mr. DUSHKIND: Exception.

To the objection that the record Exhibit A be excluded on the ground that the papers are not properly attested said objection is overruled.

Mr. DUSHKIND: Exception.

To the objection contained on page 44 that Exhibit A be excluded upon the ground that it contains hearsay statements and matters of opinion and so forth, said objection is overruled.

Mr. DUSHKIND: An exception.

That the motion to dismiss the complaint contained on page 45 be denied.

Mr. DUSHKIND: An exception.

That the motion to discharge the Prisoner contained on page 46 be denied.

Mr. DUSHKIND: Exception.

That the motion contained on page 48 to exclude from the evidence Exhibit 1 dated January 3rd, be granted.

Mr. CONLON: Exception.

75 The motion made on page 48 to dismiss the complaint because it is insufficient in law upon the facts thereof, is denied.

Mr. DUSHKIND: Exception.

The motion contained on page 49 to discharge the Prisoner on the ground that the warrant was issued by the Commissioner without jurisdiction, isasmuch as the Commissioner had no power or authority to issue a warrant based entirely upon the complaint upon information and belief, is denied.

Mr. DUSHKIND: Exception.

The COMMISSIONER: After carefully considering the testimony I find that the identity of the Prisoner is sufficiently established by the photograph and by the evidence of the witness Rinck as to the conversation he had with the prisoner and with the prisoner's wife when first seen by the Ellis Island officers upon the steamer.

I find that the forgery and utterance of forged papers is sufficiently established by the evidence of Tugendreich and Fraidenreich, as to the forgery of the paper delivered to Fraidenreich, and by the evidence of Tugendreich and Birenzweig as to the note or

76 paper delivered to Birenzweig, and I therefore commit the prisoner to await the action of the proper authorities.

The Commissioner agrees not to forward the record in this proceeding to the proper authorities until Saturday next in order that the attorney for the prisoner may determine whether or no he will apply for a Writ of Habeas Corpus and Certiorari.

77 EXHIBIT B.

Resolution.

On July 8th, 1910, in the city of Lodz, the t. p. the d. Judicial Inquirer of the 4th precinct of the city of Lodz, having examined the matter, found as follows:

In the current year of 1910, in the city of Lodz, a leather goods merchant Leiba Glikeman, having purchased from the Lodz merchants: Judko Birenzweig, Kosim Zelinsky, Binema Freidenreich, Jakov Pachutzky, M. D. Kapuschiner, G. Pinkuschewitsch, Schaja Ilivkowitsch, F. Friedlender, Ch. M. Wiener, F. Wyschegrodsky, S. Fain, I. L. Zudkovitsch and others, leather goods, gave them, among other equivalents in payment for the goods also commercial notes, having endorsed same in his name; the total amount of the notes issued by him was six thousand roubles. Short time after that there were rumors that Glikeman, having closed his store in the house No. 32 in Benedict Street, disappeared from the city, the result of which was that the merchants, who received from him the notes on account of the goods sold, started the examination of those notes, and it was discovered that the notes were spurious. In their complaint and at the investigation they accused Leiba Glikeman of having fraudulently issued those notes in the name of Moschek-Leiba Tugendreich and of other persons. The experts, who compared the handwritings, came to the conclusion that the signatures of

the drawers of the notes, presented by the complainants in the matter, are forged and made by the hand of Leiba Glikeman.

According to the information, attached to the matter, Glikeman disappeared, and the rumors indicate that he went abroad.

Therefore, and on the ground of art. 396 of the Code of Criminal Procedure, the t. p. the d. Judicial Inquirer decided: to present against Leiba Glikeman accusation in accordance with art. 1160 of the Penal Code. Signed: Temp. perf. the duty of Judicial Inquirer

True to the original.

[SEAL.] T. p. the D. Judicial Inquirer:

(Sig.) E. SCHOLKOVNIKOFF.

78 *Resolution.*

On July 24th, 1910, city of Lodz, t. p. the d. Judicial Inquirer of the 4th precinct of the city of Lodz, having investigated the matter, and taking into consideration that Leiba Glikeman, who figures in this matter in the capacity of the accused in accordance with art. 1160 of the Penal Code, disappeared prior to his examination; that according to the information of the Lodz Detective Bureau, he escaped to New York, where he is detained by the local police on his arrival there a few days ago, therefore and on the ground of art. 190 of the Code of Judicial Institutions, and in accordance with the Convention with the United States of North America of 19 February/4 March 1893, has decided: to enter into communication in the established order in regard to the question of extradition of Glikeman to the Russian authorities.

Signed t. p. the d. Judicial Inquirer:

E. SCHOLKOVNIKOFF.

[SEAL.] T. p. the d. Judicial Inquirer:

E. SCHOLKOVNIKOFF.

Copy.

Resolution.

On July 24th, 1910, city of Lodz, t. p. and d. Judicial Inquirer of the 4th precinct of the city of Lodz, having investigated the matter and taking into consideration that the accused in this matter Leiba Glikeman, detained in New York, is liable to the limitation of civil rights, that he is bound to be brought to justice, on the ground of art. 389 of the Code of Criminal Procedure and of the circular of the Minister of Justice of June 18th, 1908 sub No. 6506, decided: in order to bring Leiba Glikeman for investigation of the matter—to confine him in custody.

(Signed) T. p. the d. Judicial Inquirer:

E. SCHOLKOVNIKOFF.

True to the original.

[SEAL.] T. p. the d. Judicial Inquirer:

(Sig.) E. SCHOLKOVNIKOFF.

Extract From the Law.

Art. 1160 of the Penal Code says:—

Whoever forges signature of another on a note or in any other way draws fraudulently such a note, is liable for such act to
79 be deprived of all special civil right and to be confined in the correctional convicts establishments for the period of time from four to five years.

[SEAL.] T. p. the d. Judicial Inquirer:

E. SCHOLKOVNIKOFF.

Information.

Leiba-Levek Pinkusov Glikeman, 45 years of age, a Jew, permanent inhabitant of the city of Novoradomsk, temporarily resided in the city of Lodz, married, of medium height, brown hair, dark eyes, round face, thick set, wears beard and mustache, has no peculiar marks. A photograph of Glikeman is hereto attached.

[SEAL.] T. p. the d. Judicial Inquirer:

(Sig.) E. SCHOLKOVNIKOFF.

Copy.

Protocol.

On July 7th, 1910 t. p. the d. Judicial Inquirer of the Petrokov Circuit Court of the 4th precinct of the City of Lodz, in his office, examined, observing articles 307 and 443 of the Code of Criminal Procedure, the below named witness, who deposed:

Chaim Isaakov Zelinsky, 45 years of age, a Jew, I reside on Sredniaja street, No. 4, merchant, never was tried in court, know to read and write.

Leiba Glikeman in the course of about three years was buying in my leather store leather goods; half a year ago he became a bankrupt and paid to his creditors, among them to me, only 50%. In June of this year this very Glikeman called on me and bought from me leather goods for the amount of 342 roubles; on account of this sum Glikeman gave me a note for one hundred roubles, drawn by a merchant of the city of Ozorkov, Tugendreich, and the balance of the sum Glikeman promised to pay either in cash or else in commerical notes; I agreed to this and accepted that note of Tugendreich, whereupon Glikeman placed his endorsement on the back of same in my presence. The time passed, yet Glikeman did not come to me with the money, nor with a note, so I commenced to make inquiry in the town about him, and found out that Glikeman closed his store in the house No. 32 in Benedict Street, and disap-
80 peared somewhere they say—abroad; then I commenced to examine the note for one hundred roubles, which he endorsed in my favor on account for the goods, and it was found out

that Moscha-Leib Tugendreich did not draw any notes in Glikeman's favor and that this note was fraudulent. I learned that other merchants, to whom Glikeman also gave fraudulent notes on account for the goods, are lodging a complaint against him and I joined them and am accusing him of having drawn, personally or with the assistance of another person, a spurious note for one hundred roubles in the name of M. L. Tugendreich. I bind myself to produce this note, as I have forgotten to take it with me.

In the meantime I have nothing else to add. It has been read over.

(Signed) CH. ZELINSKY.

T. p. the d. of Judicial Inquirer:
E. SCHOLKOVNIKOFF.

True to the original.
[SEAL.] T. p. the d. of Judicial Inquirer:
E. SCHOLKOVNIKOFF.

Copy.

Protocol.

On July 8th, 1910 t. p. the d. Judicial Inquirer of the Petrokov Circuit Court of the 4th precinct of the City of Lodz, in his office, examined, observing articles 307 & 443 of the Code of Criminal Procedure, the below named witness, who deposed:

Moschek-Leib Jakubov-Maerov Tugendreich, 50 years of age, a Jew, I reside in the city of Ozorkov, merchant, never was tried in Court, know to read and write, an outsider.

I keep in the city of Ozorkov for the last 28 years a leather and dry goods store. With Leiba Glikeman I was very little acquainted; about a year and a half or two years ago I bought from him in the city of Lodz leather goods for about 200-300 roubles, but the money for the goods I have paid to him long ago and never drew any notes in Glikeman's favor. As regards the two notes for 100 roubles each, which you, Mr. Inquirer, produced to me, (two notes are produced which were attached to the case after the examination of Freidenreich and Birenzweig), then these notes I have never drawn
81 for Glikeman and the signatures on them are not mine, and have not been made by me, but are spurious; judging by the fact that those signatures represent kind of imitation of my signatures, I conclude that the person who forged my signatures must have had the samples of the latter. I suspect that this fraud was perpetrated by Glikeman and as far as it seems to me, the text of the notes was written by Glikeman and besides this, as I have heard, he, having forged many notes in my name and in the name of other persons, put such notes in circulation, and himself disappeared, but where he is gone to, I do not know; he closed his store in the house No. 32 in Benedict Street but there are no goods in that store.

I have nothing else to add. Read over.

(Signed) M. L. TUGENDREICH.

T. p. the d. of Judicial Inquirer:
(Sig.) E. SCHOLKOVNIKOFF.

True to the original.
[SEAL.] T. p. the d. of Judicial Inquirer:
E. SCHOLKOVNIKOFF.

Copy.

Protocol.

On July 7th, 1910 t. p. the d. of Judicial Inquirer of the Petrokov Circuit Court of the 4th precinct of the City of Lodz, in his office, examined, observing articles 307 & 443 of the Code of Criminal Procedure, the below named witness, who deposed:

Judka Selmanov Birenzweig, 42 years of age a Jew, I reside in Novomeiskaja Street, No. 19, merchant, never was tried in Court, know to read and write.

In June of this year, there appeared before me, in my store of leather goods, the Lodz merchant Leiba Glikeman, known to me by outside appearance, and bought of me leather goods for the amount of two hundred roubles; in payment he gave me two notes, one—his own, i. e., drawn by him to my order, for one hundred roubles, while the other note, also for one hundred roubles, but drawn by a Tugendreich, who resides in Ozorkov, to the order of Glikeman; the latter assured me that this note was drawn by a well to do man, and I accepted it from Glikeman, whereupon he endorsed it on the back in my favor. A few days later, after I learned by accident in the city, that Glikeman left for abroad, I commenced to suspect that he, surely, put in circulation forged notes, and really got
82 convinced that the note, as if drawn by Tugendreich, is a spurious one and has never been issued by the latter to Glikeman; this was confirmed to me also by Tugendreich; I accuse Glikeman in drawing a fraudulent note in the name of Tugendreich, and just before I suffered a loss on this note to the extent of one hundred roubles. I present, Mr. Inquirer, this spurious note (a note drawn by Tugendreich for one hundred roubles to the order of Leiba Glikeman is presented). Besides me, Glikeman defrauded in the same way also many Lodz merchants for the total amount of something like ten thousand roubles.

I have nothing else to add. **Read over.**

(Signed) JUDKA BIRENZWEIG.

T. p. the d. of Judicial Inquirer.
(Signed) E. SCHOLKOVNIKOFF.

[SEAL.] T. p. the d. of Judicial Inquirer:
E. SCHOLKOVNIKOFF.

Copy.

Protocol.

On July 7th 1910 t. p. the d. of Judicial Inquirer of the Petrokov Circuit Court of the 4th precinct of the City of Lodz, in his office, examined, observing articles 307 & 443 of the Code of Criminal Procedure, the below named witness, who deposed:

Binem Bezalelev Fraidenreich, 36 years of age, a Jew, I reside in Novyj Rynek No. 10, merchant, never was tried in Court, know to read and write.

Leiba Glikeman was purchasing from me leather goods, and paid me for same, among others, by a note for one hundred roubles, drawn by the order of M. Tugendreich, in the city of Ozorkov; the last time Glikeman purchased goods from me in June of this year; as ther- were spreading rumours in the city to the effect that Glikeman disappeared somewhere, I started to make inquiries, and was convinced that the note for one hundred roubles was a spurious one and that the signature of the drawer of the note, Moschek-Leiba Tugendreich was a fraudulent one and was not made by him; there indeed resides in the city of Ozorkov a merchant by the name Moschek Leib Tugendreich, but he is a well to do man and did not issue notes to Glikeman. As it was found afterwards Glikeman
83 set in circulation many fraudulent notes, and himself disappeared abroad. Besides the loss of one hundred roubles on this note, Glikeman owes me also 175 roubles on the note drawn by him in my favor also on account for the goods purchased by him from me. Glikeman resided and had his store in the house No. 32 in Benedict Street. I accuse Glikeman in drawing a fraudulent note for one hundred roubles in the name of Tugendreich. I present to you, Mr. Inquirer, this spurious note (one note for one hundred roubles is present-).

I have nothing else to add. Read over.

(Signed) B. FRAIDENREICH.

T. p. the d. of Judicial Inquirer:

E. SCHOLKOVNIKOFF.

[SEAL.] T. p. the d. of Judicial Inquirer:

E. SCHOLKOVNIKOFF.

Verification.

STATE OF NEW YORK,
County of New York, ss:

Vladmir P. Polevery, being duly sworn, deposes and says: That he is the Chief Russian Clerk of The Equitable Life Assurance Society in the City of New York; that he is familiar with the languages and is accustomed to translate from Russian into English and from English into Russian.

That he has translated the foregoing papers into the English language from the Russian, and that said translation is in all respects a true and correct translation in the English language of the various documents heretofore attached in the Russian language.

VLADMIR P. POLEVERY.

Sworn to before me this 20th day of December, 1910.

CHAS. A. CONLON,
Notary Public, New York Co.

Endorsed: U. S. Circuit Court, Southern District, N. Y. Filed Feb. 6, 1911, John A. Shields, Clerk.

84 United States Circuit Court, Southern District of New York.

In the Matter of the Petition of LEIBEL PINCUSOV GLUCKSMAN for a Writ of Habeas Corpus.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Leibel Pincusov Glucksman, being duly sworn deposes and says: I herewith traverse the return to the writ of Habeas Corpus herein and deny that there is any evidence of criminality on my part, and I furthermore deny that I am held or imprisoned by reason of any legal process or by reason of any evidence that I committed any acts of forgery or of passing or of uttering forged papers of any kind or that I am guilty of forging or passing or offering any forged papers.

L. P. GLUKSMAN.

Sworn to before me this 27th day of January, 1911.

W. L. S. LANGMAHN,
Comm'r of Deeds, N. Y. Co.

(Endorsed:) U. S. Circuit Court, Southern District N. Y., Filed Feb. 6, 1911, John A. Shields, Clerk.

85 United States Circuit Court, Southern District of New York.

In the Matter of the Application for Extradition of LEIBEL PINCUSOV GLUCKSMAN.

On Writs of Habeas Corpus and Certiorari.

COXE, *J:*

In the Matter of Sternaman, 77 Fed. Rep. 595, I had occasion to examine the law applicable to proceedings of this character and find it unnecessary to repeat what was there said. That case was subsequently carried to the Circuit Court of Appeals (80 Fed. Rep. 883)

which court also examined and stated the rules applicable to a proceeding of this character. The Court says:

"The facts and circumstances proved authorized conflicting presumptions and probabilities as to her guilt or innocence, and it was the province of the commissioner to determine their import, and whether they were such as to justify him in exercising his power to commit her to custody pending the action of the department of state. No useful purpose would be subserved by an analysis or discussion of the evidence."

It will be seen that, from the very nature of the proceeding, it is often impossible to obtain evidence necessary to sustain a conviction upon the trial of an indictment. Such proof is not required. It is enough that there is some evidence to warrant the commissioner in holding the accused person.

A confused mass of papers, some competent and others incompetent, have been submitted, without index or systematic arrangement of any kind. I have read all having any bearing upon the controversy and think they contain some proof to establish the following propositions:

86 First. That in the summer of 1910 forged papers were uttered by a leather merchant residing at Lodz in Russia, named Leiba Gliksman.

Second. That these papers were given in exchange for merchandise, the name of Moschek-Leiba Tugendreich being forged thereon.

Third. That the person who committed the forgery disappeared from Lodz prior to July 24, 1910.

Fourth. That Leiba Pincusov Glucksman, a leather merchant formerly living at Lodz, Russia, arrived at the Port of New York early in August, 1910.

Fifth. That the person so arriving in New York, except in the matter of age, he being apparently less than forty five years old, answers the description sent from Russia of the person who forged the instruments.

Sixth. That the photograph attached to the papers sent from Russia is a photograph of the prisoner.

I do not overlook the argument of counsel that the commercial paper which was forged is referred to indiscriminately as "notes" and "bills of exchange." In my view this is wholly immaterial. Even in this country such papers are often referred to as notes or bills. Such exact nicety of description as is argued by counsel for the prisoner is not required in a preliminary proceeding of this character.

The papers which were forged being sufficiently described, it makes no *different* what name is applied to them. It is a crime to forge and utter any piece of commercial paper, whether it be called a bill or a note and whether the sum named therein be large or small.

As before observed, this is not a trial upon an indictment, but a preliminary proceeding, the object of which is to bring the offender before a court having jurisdiction to try and punish him.

87 Proof that the prisoner uttered a single forged note or bill of exchange is sufficient to justify his extradition. I also

attach very little importance to the fact that the name of the prisoner is spelled differently in the various papers. In the Russian papers it is spelled Leiba Gliksman and in the papers written in the English language, it is frequently spelled Lewek Glucksman, the difference, it is thought, being largely attributable to whether Polish, Russian or Yiddish is used. In any event, it is immaterial; if the prisoner be the person who committed the forgery he may be held under an alias, without any knowledge of his true name.

The only question which causes me any difficulty is the question of identity. It would be more satisfactory if someone who knew the prisoner in Lodz could point him out as the forger or the person who passed the forged instruments. However, after examining all the relevant papers submitted, I am unable to say that the Commissioner was without proof in holding the prisoner as the guilty party.

Writs dismissed.

February 6, 1911.

(Endorsed:) Circuit Court of the United States for the Southern District of New York.—In the Matter of the Application for the Extradition of Leibel Pincusov Glucksman.—Opinion, Coxe, J.—U. S. Circuit Court, Southern District N. Y., Filed Feb. 6, 1911, John A. Shields, Clerk.

88 At a term of the United States Circuit Court held in and for the Southern District of New York at the United States Post Office and Courts Building in the Borough of Manhattan, City of New York, on the 20th day of February, 1911.

Present: Hon. Alfred C. Coxe, U. S. Circuit Judge.

In the Matter of the Application for the Extradition of LEYBA alias LEWITT GLIKSMAN under the Treaty Between the United States and the Empire of Russia.

Upon reading and filing the petition of Leibel Pincusov Gluksman verified the 18th day of January, 1911, and the writ of habeas corpus issued out of the United States Circuit Court for the Southern District of New York on the 19th day of January, 1911, and the writ of certiorari dated the 19th day of January, 1911, and the return of William Henkel, Esq., United States Marshal to said writ of habeas corpus and the commitment issued herein by Thomas Alexander, Esq., United States Commissioner and the return of said commissioner to said writ of certiorari and the traverse to said writ of habeas corpus verified by said Gluksman, January 27th, 1911, and upon all the papers and proceedings heretofore had in the matter of the application of the Imperial Russian Consul General for the extradition of petitioner excepting however such papers and exhibits as have been excluded from the evidence by said commissioner, and after hearing Charles Dushkind, Esq., Counsel for the Petitioner in

support of said writs of habeas corpus and certiorari and Charles A. Conlon, Esq., of Counsel for the Imperial Russian Consul General in opposition thereto, and after due consideration having
89 been had, now on motion of Coudert Brothers, Attorneys for the Imperial Russian Consul General, it is

Ordered that the writs of habeas corpus and certiorari dated January 19th, 1911, be and they same are hereby dismissed, and

It is further ordered that said petitioner be remanded to the custody of the United States Marshal in and for the Southern District of New York to await extradition to Russia in accordance with the terms of the Treaty between the United States of America and the Empire of Russia and the Statutes of the United States in such case made and provided.

ALFRED C. COXE,
U. S. Cir. Judge.

Approved as to form.

COUDERT BROTHERS,
Att'ys for Demanding Government.
CHAS. DUSHKIND,
Att'y for Petitioner.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Feb. 20, 1911. John A. Shields, Clerk.

90 Circuit Court of the United States, Southern District of New York.

In the Matter of the Application for the Extradition of LEYBA alias LEWITT GLIKSMAN under the Treaty Between the United States and the Empire of Russia.

It is hereby stipulated, agreed and consented that the papers and documents including the photograph constituting Exhibit "A" be eliminated from the record to be certified herein to the Supreme Court of the United States, and that said original exhibit be forwarded to and filed with the Clerk of the Supreme Court of the United States to be used at the argument of the appeal herein.

Dated, New York, February 25th, 1911.

COUDERT BROTHERS,
Attorneys for Demanding Government.
CHAS. DUSHKIND,
Attorney for Petitioner.

So ordered.

E. H. LACOMBE, *U. S. C. J.*

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Feb. 28, 1911. John A. Shields, Clerk.

91 Circuit Court of the United States, Southern District of New York.

In the Matter of the Application for the Extradition of LEYBA alias LEWITT GLIKSMAN, under the Treaty Between the United States and the Empire of Russia.

Petition for Appeal.

Comes now Leibel Pincusov Gluksman, the petitioner herein conceiving himself aggrieved by the order and decree heretofore made and entered by this court, dismissing the Writs of Habeas Corpus and Certiorari herein and remanding the petitioner to the custody of William Henkel, United States Marshal, and having filed with the clerk of this court his assignment of errors, and desiring to appeal from said order or decree to the Supreme Court of the United States, prays this court to allow an appeal to the Supreme Court of the United States from said decree and that a certified transcript of the record upon which said decree was made be transmitted to said court.

Dated, New York, February 21st, 1911.

CHARLES DUSHKIND,
Attorney for Petitioner.

5 Beekman Street, New York City.

92 Circuit Court of the United States, Southern District of New York.

In the Matter of the Application for the Extradition of LEYBA alias LEWITT GLIKSMAN under the Treaty Between the United States and the Empire of Russia.

The above named Leibel Pincusov Gluksman the petitioner herein having presented his petition asking leave to appeal to the Supreme Court of the United States from the decree entered herein on the 21st day of February, 1911, dismissing the Writs of Habeas Corpus and Certiorari, and remanding the petitioner to the custody of the United States Marshal for the Southern District of New York.

Now, on motion of Charles Dushkind, attorney for said petitioner, it is

Ordered, that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein, dismissing the Writs of Habeas Corpus and Certiorari and remanding the petitioner to the custody of the United States Marshal for the Southern District of New York, be and the same hereby is allowed and that the certified transcript of the record of all proceedings herein as well as of the return of the said William Henkel, United States Marshal to the said Writ of Habeas Corpus and the return of the said Thomas Alexander, United States Commissioner to the said Writ of Certiorari duly authenticated be forthwith transmitted to the Supreme Court of the United States and it is further

Ordered, that the bond on appeal be fixed at the sum of Two Hundred and fifty dollars, as a bond for costs and damages
93 on appeal, and that a supersedeas upon the order or decree in said appeal mentioned be and the same hereby is granted.

Dated, New York, February 21st, 1911.

ALFRED C. COXE, *U. S. C. J.*

94 United States Circuit Court, Southern District of New York. In the Matter of the Application for the Extradition of Leyba alias Lewitt Gliksman under the treaty between the United States and the Empire of Russia. Original. Petition for Appeal and Order. Chas. Dushkind, Attorney for Petitioner, Temple Court, 5 Beekman Street, Manhattan, New York.

Due Service of Copy of the Within is hereby admitted N. Y. 2/21, 1911. Wm. Henkel, U. S. Marshal, per A. J. Muiberg, Deputy. Copy Rec'd Feb. 21/1911. Coudert Brothers. U. S. Circuit Court, Southern District, N. Y. Filed Feb. 21, 1911. John A. Shields, Clerk.

95 Circuit Court of the United States, Southern District of New York.

In the Matter of the Application for the Extradition of Leyba alias Lewitt Gliksman under the Treaty Between the United States and the Empire of Russia.

And now comes the petitioner by his attorney Charles Dushkind in connection with his petition of appeal from the order entered herein on the 20th day of February, 1911 dismising the writs of habeas corpus and certiorari herein and makes and files the following assignments of error. The Court erred,

First. In dismissing the writs of Habeas Corpus and Certiorari and remanding the petitioner.

Second. In holding that the petitioner is lawfully held in custody.

Third. In holding that the United States Commissioner possessed the power and jurisdiction to issue the warrant of committment herein.

Fourth. In holding that the complaint herein conferred jurisdiction on the United States Commissioner to issue a warrant of arrest in said proceedings.

Fifth. In holding that there is evidence that the petitioner committed the crime or crimes charged in the complaint or either of said crimes.

Sixth. In holding that there is evidence showing that your petitioner is the person charged with the commission of said crime or crimes.

96 Seventh. In holding that the Commissioner had jurisdiction to issue the committment herein.

Eighth. In holding that the committment issued herein by the Commissioner on or about January 19th, 1911 is a valid and sufficient committment.

Ninth. In holding and deciding that the petitioner is properly and legally committed for forging and uttering forged bills of exchange, although the evidence herein charges the accused with having forged or uttered forged promissory notes.

Tenth. In holding that the photograph of the petitioner although unauthenticated as required by law and although unidentified was properly admitted in evidence to establish the identity of the accused.

Eleventh. In holding that the petitioner is lawfully held, imprisoned and restrained of his liberty by the United States Marshal for the Southern District of New York, and in holding that the petitioner is not entitled to be discharged from custody.

Twelfth. In holding that the petitioner is not deprived of his liberty without due process of law.

Wherefore, your petitioner prays that the order dismissing the said writs of Habeas Corpus and Certiorari and remanding your petitioner to the custody of William Henkel, United States Marshal for the Southern District of New York, be reviewed and that your petitioner be discharged from custody.

LEIBE PINCUSOV GLUCKSMAN,
By CHARLES DUSHKIND,
His Attorney.

Charles Dushkind, Attorney for petitioner, 5 Beekman Street, New York City.

97 United States Circuit Court Southern District of New York. In the Matter of the Application for the Extradition of Leyba alias Lewitt Gliksman under the Treaty between the United States and the Empire of Russia. Original. Assignment of Errors Chas. Dushkind, Attorney for Petitioner, Temple Court, 5 Beekman Street, Manhattan, New York. U. S. Circuit Court, Southern District of N. Y. Filed Feb. 21, 1911. John A. Shields, Clerk.

98 Circuit Court of the United States, Southern District of New York.

In the Matter of the Application for the Extradition of LEYBA alias LEWITT GLIKSMAN under the Treaty Between the United States and the Empire of Russia.

Bond for Damages and Costs.

Know all men by these presents, that I William Jacobus, of the City of Paterson, State of New Jersey, am held and firmly bound unto the United States of America, in the sum of Two hundred and fifty dollars, to be paid to the United States of America, for the payment of which well and truly to be made I do bind myself, my heirs, executors and administrators, firmly by these presents.

Sealed with my seal and dated this 21st day of February, 1911.

Whereas, the above named Leibel Pincusov Glucksman has prosecuted an appeal to the Supreme Court of the United States to reverse

the decree entered herein dismissing the Writs of Habeas Corpus and Certiorari, and remanding said Leibel Pincusov Glucksman to the custody of the United States Marshal for the Southern District of New York.

Now therefore, the condition of this obligation is such that if the above named Leibel Pincusov Glucksman shall prosecute said appeal to effect and answer all damages and costs, if he shall fail to make good said appeal then the above obligation is to be void, otherwise to remain in full force and effect.

WILLIAM JACOBUS. [SEAL.]

99 Sealed and delivered and taken and acknowledged before me this 21st day of February, 1911.

[SEAL.] ISAAC P. STORM,
Notary Public, N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

William Jacobus, being duly sworn deposes and says, that he resides at No. Seventy one Twelfth Avenue, in the City of Paterson, State of New Jersey, and is a freeholder; that he is worth the sum of five hundred dollars over and above his just debts and liabilities.

WILLIAM JACOBUS.

Sworn to before me this 21st day of February, 1911.

[SEAL.] ISAAC P. STORM,
Notary Public, N. Y. Co.

100 Endorsement: United States Circuit Court, Southern District of New York. In the Matter of the Application for the Extradition of Leyba alias Lewitt Glucksman under the Treaty between the United States and the Empire of Russia. (Original.) Bond for Damages and Costs. Chas. Dushkind, Attorney for Petitioner, Temple Court, 5 Beekman Street, Manhattan, New York. The Within Bond is hereby approved. Dated, New York, Feb. 21, 1911. Alfred C. Coxe, U. S. C. J. U. S. Circuit Court Southern District N. Y. Filed Feb. 21, 1911. John A. Shields, Clerk.

101 The President of the United States to William Henkel, U. S. Marshal, Southern District of New York, and Vladimar M. Yourieff, Imperial Russian Vice Consul of the City of New York, Greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the City of Washington, District of Columbia, within thirty days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States Second Circuit, Southern District of New York wherein Leibel Pincusov Glucksman is petitioner, and in a certain suit or proceeding entitled In the matter of the application for the extradition of Leyba Alias Lewitt Gliksman

under the treaty between the United States and the Empire of Russia, to show cause if any there be why the order and decree in the said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Witness Honorable Alfred C. Coxe, Judge of the Circuit Court of the United States Second Circuit Southern District of New York this 21st day of February, 1911, and the Independence of the United State one hundred and thirty *sixth*.

ALFRED C. COXE, *U. S. C. J.*

Due service of the foregoing citation on appeal is hereby admitted. Dated, New York, February, 21, 1911.

WILLIAM HENKEL,
U. S. Marshal,
Per A. J. MURBERG, *Deputy.*

102 [Endorsed:] 3/263. E. & A. D. 3203. United States Circuit Court, Southern District of New York. In the Matter of the Application for the Extradition of Leyba alias Lewitt Gliksman under the treaty between the United States and the Empire of Russia. Original. Citation. Chas. Dushkind, Attorney for Petitioner, Temple Court, 5 Beekman Street, Manhattan, New York. Copy rec'd Feb. 21, 1911. Coudert Brothers. U. S. Circuit Court, Southern District, N. Y. Filed Feb. 21, 1911. John A. Shields, Clerk.

103 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby Certify that the foregoing pages, numbered from one to 102 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled Leibel Pincusov Glucksman Petitioner-Appellant, against William Henkel, U. S. Marshal, Southern District of New York, Appellee, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 3rd day of March, in the year of our Lord One Thousand Nine Hundred and Eleven, and of the Independence of the said United States the One Hundred and Thirty-fifth.

[Seal of the Circuit Court, South. Dist. New York.]

JNO. A. SHIELDS, *Clerk.*

I hereby certify that the fee for certifying the transcript of record in the above entitled cause amounted to $27.65.

JNO. A. SHIELDS, *Clerk.*

[Endorsed:] United States Supreme Court. Leibel Pincusov Glucksman Petitioner-Appellant, vs. William Henkel, U. S. Marshal, S. D. of N. Y., Appellee. Transcript of Record from the Circuit Court of the United States for the Southern District of New York.

Endorsed on cover: File No. 22,565. S. New York C. C. U. S. Term No. 944. Leibel Pincusov Glucksman, appellant, vs. William Henkel, United States marshal for the southern district of New York, et al. Filed March 6th, 1911. File No. 22,565.

MAR 31 1911
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1910

No. 944

LLIBEL PINCUSOV GLUCKSMAN

Appellant

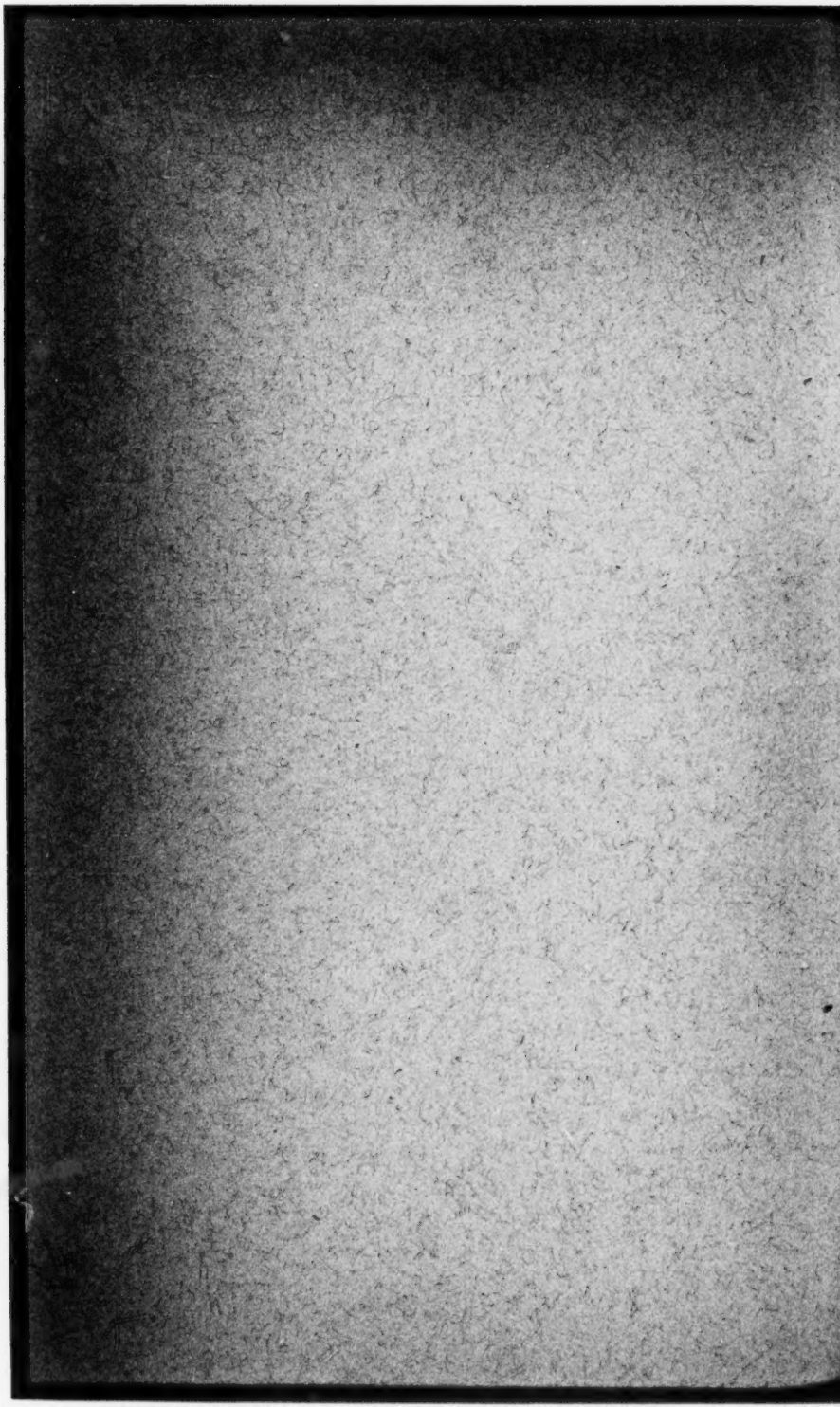
vs

WILLIAM HENKEL, United States Marshal, S. D. of N. Y., *et al.*

Appellees

APPELLANT'S BRIEF

CHAS. DUSHKIND
Counsel for Appellant



Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 944.

LIBEL PINCUSOV GLUCKSMAN, Appellant, against WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, *et al.*, Appellees.	Brief for Appellant.

Statement of the Case.

This is an appeal from a final order of U. S. Circuit Court for the Southern District of New York, entered February 6th, 1911, dismissing writs of habeas corpus and certiorari sued out by the appellant and remanding him to the custody of the respondent under a commitment issued by a U. S. Commissioner upon a complaint of the Russian Government demanding the surrender of the appellant under the Extradition Treaty between the United States and the Russian Government.

The appellant arrived with his wife and three children at the Port of New York, on Aug. 3, 1910, on the steamer Rhein sailing from Bremen. He was met at the steamer by private detective

Brinck hired by the Russian Government, who engaged Glucksman in a conversation and he informed him that he is charged with having absconded etc. Glucksman protested that he knew nothing about it. Upon the request of the detective, however, Glucksman was detained by the Immigration Authorities until about Aug. 15, 1910, when he was finally discharged and permitted to land with his wife and two children the other child having died on Ellis Island. Upon landing in the city he was met by the same detective and a deputy United States marshal with a warrant of arrest issued by United States Commissioner Alexander upon a complaint filed by the Russian Vice Consul charging him with larceny. The detective, however, refused to identify Glucksman and the marshal refused to arrest him and so he was permitted to go. About five months thereafter the appellant was however arrested at his home upon the same warrant and the same papers upon which the detective had refused to identify him on the first occasion. On December 22nd, 1910, the complaint was dismissed by the Commissioner on motion of the demanding Government and the appellant was then and there re-arrested upon a new complaint, which is the one involved in the case at bar. In the new complaint the appellant is charged with forging three bills of exchange of 100 roubles each and with uttering the same papers. Several hearings before the Commissioner were thereafter had and the Commissioner decided to hold the prisoner upon the charge of forging two bills of exchange of 100 roubles or $50 each, dismissing the charge as to the third one. The prisoner then sued out writs of habeas corpus and

certiorari, and to the writ of habeas corpus the marshal filed his return stating that he is holding the prisoner by virtue of a commitment, etc., duly issued by Commissioner Alexander, which commitment was attached to his return. The appellant duly traversed the marshal's return and the Court below heard the cause upon the entire record, and dismissed both writs remanding the prisoner. From the final order dismissing the writs this appeal has been taken.

Errors Relied Upon.

We contend that the Court erred in dismissing the writ of habeas corpus, because

(1). There is absolutely no legal evidence that (a) a crime has been committed or (b) that the prisoner has committed the crime.

(2) There is no legal proof showing that the prisoner is the person accused of the crime in question, but, on the contrary, the proof shows affirmatively that the prisoner is not the man described in the papers submitted by the demanding Government.

(3) In the absence of any legal proof the Commissioner acted without jurisdiction in issuing the commitment.

(4) It appears upon the face of the papers submitted by the demanding Government that this proceeding was instituted by creditors only for the purpose of forcing the accused to pay some small debts incurred in ordinary business transactions.

(5) The complaint charged the prisoner with having forged and uttered three forged *bills of ex-*

change of 100 roubles or $50 each, while in the so-called depositions the accused is charged with having forged three *promissory notes*, and hence we contend that the evidence of forging or passing forged notes cannot sustain a charge of forging or passing bills of exchange any more than one can be convicted of stealing a horse upon evidence that he stole a wagon, and hence the Commissioner acted without jurisdiction in issuing the commitment.

(6) The complaint is fatally defective inasmuch as it is based entirely upon information and belief, and hence is not a sufficient complaint under oath as required by the Statute and under the decision of this Court in Rice *v.* Ames, and so the Commissioner acted without jurisdiction.

(7) The complaint is bad because it fails to set forth facts sufficient to constitute a crime within the meaning of the treaty and the laws of the United States, and hence the Commissioner was without jurisdiction in proceeding thereon.

(8) Both the Warrant and the final Commitment under which the prisoner is held as shown by the marshal's return to the writ of habeas corpus are bad upon the face thereof inasmuch as they show that the prisoner is held for "forging papers" without specifying the character of the papers, and we contend that a mere piece of paper cannot form the basis of a charge of forgery. The paper must have some character, it must be some kind of an obligation, it must be such paper, the forging of which would constitute forgery under our laws, and so we maintain that the warrant and the final commitment fail to show that the prisoner has committed any crime.

ARGUMENT.

Point I.

WHILE A WRIT OF HABEAS CORPUS CANNOT PERFORM THE FUNCTIONS OF A WRIT OF ERROR THE COURT WILL NEVERTHELESS GO BEHIND THE COMMITMENT TO ASCERTAIN WHETHER THERE WAS ANY LEGAL EVIDENCE TO GIVE THE COMMISSIONER JURISDICTION, SINCE IN THE ABSENCE OF SOME LEGAL PROOF THE COMMISSIONER HAS NO JURISDICTION.

Article 1, of the Treaty between Russia and the United States provides for the surrender, etc., of persons charged with the commission of crimes therein specified,

> "provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime or offense had been there committed."

At the outset we must state that while we realize that a writ of habeas corpus cannot perform the functions of a writ of error it is nevertheless submitted that the Court will go behind the commitment to ascertain whether there was any competent evidence at all to give the commissioner jurisdiction. While the Court will not review the weight or the effect of the evidence it will upon a writ of habeas corpus pass upon the question as to whether there was any legal evidence upon which the commissioner has acted as was said by this Court in

Terlinden v. *Ames,* 184 U. S., page 541.

"The statutes in respect of extradition gives no right of review to be exercised by any court or judicial officer and what cannot be done directly cannot be done indirectly through the writ of Habeas Corpus. The Court issuing the writ may however 'inquire and adjudge whether the Commissioner acquired jurisdiction of the matter, by conforming to the requirements of the treaty and the statute; whether he exceeded his jurisdiction; *and whether he had any legal or competent evidence of facts before him on which to exercise a judgment as to the criminalty of the accused,* but such court is not to inquire whether the legal evidence of facts before the commissioner was sufficient or insufficient to warrant his conclusion' (BLATCHFORD, J., *Re Stupp.*, 12 Blatchf., 501, Ornelas *v.* Ruiz, 161 U. S., 508)."

In the case at bar we contend not that the evidence was insufficient but that there is no legal evidence at all and hence the commissioner acted wholly without jurisdiction.

The question now arises as to what would be sufficient evidence of criminality according to the Laws of the place where the fugitive is found, in other words, are we to be governed by the Federal laws or are the Laws of the State of New York controlling on this proposition, the fugitive having been found in the State of New York.

It is now well settled that the laws of the state where the fugitive is found and not the Acts of Congress are to govern in such cases; this has been held and decided by this Court in

Wright *v.* Henkel, 190 U. S., 61;
Pettit *v.* Walsh, 194 U. S., 205.

So that we will now consider the question as to what would be sufficient evidence to hold an ac-

cused for trial by a committing Magistrate in the State of New York. Can the Magistrate hold a prisoner upon mere suspicion or speculation, or must there be some competent legal proof to establish, first, that a crime has been committed and second, that the accused is the person who committed it? And it seems to me that the rule is well settled that while the courts will not review the Magistrates findings on the question as to the amount of evidence but the courts equally hold that the Magistrate has no jurisdiction and cannot act *unless there is some competent legal proof to* establish a probable cause.

In People *v.* Wells, 57 App. Div., 140, in a very elaborate opinion written by JENKS, J., discussing that proposition, the Court said:

> "When the defendant is brought before the Magistrate he is entitled to be informed of the charge, the depositions taken are to be read, the deponents may be examined, and other witnesses may be called. The testimony taken must be reduced to writing and preserved. After hearing the proofs, if it appear that a crime has been committed, and there is sufficient cause to believe the defendant guilty, the Magistrate must endorse on the depositions and statements, if any, an order signed, to the following effect:
>
> > 'It appearing to me by the within depositions (and statement, if any) that the crime therein mentioned (or any other crime according to the fact, stating generally the nature thereof) has been committed and that there is sufficient cause to believe the within named A. B. guilty thereof. I order that he be held to answer to the same.'
>
> "Thus, such authority of a Magistrate can only be exercised if it appears (1) that a

crime has been committed, and (2) there is sufficient cause to believe the defendant guilty upon the proofs. He has no arbitrary power. He is not like the French King of old, free to issue a *letter de cachet*. He is a Magistrate who must act with jurisdiction. And he has no jurisdiction until it be made to appear by evidence that a crime has been committed, and there is sufficient cause to warrant the belief that the defendant committed it. If his commitment is final in the sense that the proceedings preliminary cannot be scrutinized at all, there is absolute power vested in a Committing Magistrate that would wake envy in the shade of Charles of England."

"If the mere commitment were conclusive, then the writ would be largely shorn of its strength. The mere return of the magistrate would make his *ipse dixit* final, no matter how absurd, or wicked, or wanton, his determination, when tested by the facts before him, might be. To hold this would be to travel backwards into another century, and to undo the principles of the law and the statutes."

Church (Hab. Corp., p. 319), cites the pithy example stated by GRIER, J., in *ex parte* Jenkins, Fed. Cas. No. 7259:

"A. tells B. that he has seen C. kill D. B. runs off to a justice swears to the murder boldly, without any knowledge of the facts and takes out a warrant for C. who is arrested and imprisoned in consequence thereof. C. prays for a Habeas Corpus, and shows that he was the Sheriff of the County, and hanged D. in pursuance of a legal warrant. If a court could not discharge a prisoner in such a case because the warrant is regular on its face, the writ of Habeas Corpus is of little use."

"The function of the court is not to review

> the preliminary examination in order to decide the question anew, or to supplant the examination of the magistrate by its own examination, but to ascertain whether the magistrate had jurisdiction to commit the prisoner."

In another case involving the same question Judge GAYNOR writing the opinion, said:

> "The question is one of jurisdiction in the magistrate. The jurisdiction of the magistrate is limited. *They may not arbitrarily commit one to answer a charge of crime.* If an accused demand an examination the magistrate may not commit to answer to a court having cognizance of the crime unless it appear that a crime has been committed and that there is sufficient cause to believe the defendant guilty thereof. If there is no such evidence then the magistrate is without jurisdiction to commit him."

In re Henry, 35 N. Y. Supp., 210

And so the Court of Appeals in

> People, *ex rel* Perkins *v.* Moss, 187 N. Y., 410;

said:

> "If they (depositions) did not furnish reasonable and just grounds for a conclusion that the crime charged had been committed and that the defendant committed it then jurisdiction was lacking to hold the prisoner in custody for any time."

And on page 424 of the same case the Court said:

> "They showed that the design to injure the motive to despoil the company, the wrongful purpose were all lacking in the information which was laid before the magistrate and upon the warrant was issued. This being so the act of the magistrate was wholly without juris-

diction and the warrant and all proceedings under it were absolutely void."

"If the magistrate issued the warrant of arrest without sufficient evidence in the particular case, the process is a nullity. The question always must be whether the magistrate acquired jurisdiction to cause an arrest of the person and the court, upon the Habeas Corpus Proceedings, will look back of his warrant and see if the facts stated in the depositions of the prosecutor and his witnesses support his warrant."

In *ex parte* Swartwout, 4 Cranch, 75, MARSHALL, C. J. said:

"I understand the clear opinion of the court to be (if I mistake my brethren will correct me) that it is unimportant whether the commitment be regular in point or form or not; for this court, having gone into an examination of the evidence upon which the commitment was grounded, will proceed to do that which the court below ought to have done."

Moreover the prisoner traversed the return and hence the Court can properly review the evidence to ascertain whether there was any legal evidence upon which the Commissioner could act.

Point II.

THERE IS NO LEGAL EVIDENCE IN THE CASE AT BAR TO SHOW THAT A CRIME HAS BEEN COMMITTED.

The evidence upon which the demanding government seeks the surrender of the prisoner consists solely of the documents offered in evidence as Exhibit "A." The oral testimony does not aid the demanding government in any way as there is nothing in the testimony in respect to the guilt or

identity of the accused, or in respect to the commission of the alleged crime, so that the case of the demanding government must stand or fall upon the documents constituting Exhibit "A" of which Exhibit B is an English translation.

These documents consist of the following papers, to wit:

> I. The first document (Record, p. 33) is a resolution of the judicial inquirer who states in substance, under date of July 8, 1910, that he examined the matter and found that in the year 1910 LEIBA GLIKEMAN purchased leather goods from a number of parties mentioned therein, including Judko Birenzweig. Kosium Zelinsky and Binena Friedrenreich, and that he gave in part payment commercial notes endorsed in his name amounting to about 6,000 rubles.
>
> Shortly after there were *rumors* that Glikeman disappeared and as a result the merchants started examinations of those notes and discovered that the notes were spurious, etc. They accuse LEIBA GLIKEMAN of having fraudulently issued those notes in the name of MOSCHEK LEIBA TUGENEREICH.
>
> The experts who compared the handwritings came to the conclusion that the signatures of the drawers of the notes are forged and made by the hand of LEIBA GLIKEMAN, and he therefore decided to present an accusation against GLIKEMAN, etc.

It cannot be seriously contended that this document constitutes any evidence. It is simply a resolution on the part of the judicial inquirer that he had received information, etc., and that he decided to make a change. His statement that the experts who compared the handwriting came to the conclusion that the signatures were forged cannot be re-

garded as evidence without such affidavits or depositions of the experts in question. No experts are named, nor does it appear anywheres in the papers that these so-called experts were in any way qualified to act as such, nor is it shown how they have reached that conclusion or what writings they have compared in order to ascertain the handwriting.

> II. The second document (Record, p. 34) consists of a resolution by the Judicial inquirer, stating that on July 24th, 1910, he having investigated the matter and taking into consideration that LEIBA GLIKEMAN appears in the capacity of accused and having been informed that he escaped to New York he decided to apply for extradition, etc.

Surely, there is nothing in this document that contains any evidence of criminality.

> III. The third document (Record, p. 34) is likewise a resolution of the Judicial Inquirer and seems to be a warrant for his arrest and at the end of this warrant appears the following description of the accused. LEIBA LEVEK PINKUSOV GLIKEMAN, forty-five years of age a Jew permanent inhabitant of the city of Lodz, married of medium height, brown hair dark eyes, round face, thick set wears beard and mustache, has no peculiar marks. A PHOTOGRAPH OF GLIKEMAN IS HERETO ATTACHED.

There is nothing in this third document that may be called evidence of criminality.

We now come down to the depositions and so we find that the fourth document (Record, p. 35), is a protokol or a statement of CHAIM ISAAKOV ZELINSKY who says in substance that:

> LEIBA GLIKEMAN had been buying leather goods from him for about three years

and that about a half a year ago GLIKE MAN became a bankrupt and paid only fifty cents. In June Glikeman bought from him goods for 342 rubles and gave him one note for one hundred rubles drawn by a merchant TUGENDREICH, that GLIKEMAN never paid him the balance and he closed his store and disappeared. He then commenced to examine the note that GLIKEMAN gave him and it was *found out that* MOSCHA LEIB TUGENDREICH *did not draw any notes in* GILKEMAN'S *favor and that this note was fraudulent.* He learned that GILKEMAN gave fraudulent notes to other people and he joins them in accusing GILKEMAN of having drawn a spurious note, etc. He has forgotten to take the note with him and the note is not produced.

Surely, there is no evidence in this statement or deposition upon which the prisoner can be held. The note is not produced and has not been examined or inspected by anyone and ZELINSKY simply says that "*it was found out that* MOSCHA LEIB TUGENDREICH did not draw any notes in GILKEMAN'S favor, but does it appear that the note in question bears the signature of MOSCA LEIB TUGENDREICH? The witness simply says that a note had been given to him drawn by one TUGENDREICH. It is very possible that MOSCHA LEIB TUGENDREICH did not draw the note, but that it had been drawn by some other TUGENDREICH. While it is true that in order to hold or ~~permit~~ detain a prisoner there need not be any conclusive proof, a *prima facie* case showing probable cause being sufficient to hold but it is equally true that there must be some competent evidence showing that a crime had been committed and that the accused had

committed it. An accused cannot be held merely upon speculation, or upon incompetent evidence, as I shall presently point out by the authorities.

The fifth document (Record, p. 36), is a protokol or deposition of MOSCHEK LEIB JAKOBUV MAEROV TOGENDREICH, who says in substance that:

> He knew LEI BAGLIKEMAN very little, he purchased some goods from GLIKEMAN for two or three hundred rubles and paid for it in money. He never gave GLIKEMAN any notes. He had been shown two notes of one hundred rubles each produced by one *Freidenreich and Bierenzweig*, and he said that the signatures on these notes are not his, and the notes have not been made by him, and he further says, "Judging by the fact that those signatures represent kind of imitation of his signature he concludes that the person who forged his signatures must have had samples of the latter. I *suspect* that this fraud was perpetrated by GLIKEMAN and it seems to him that the text of the notes was written by GLIKEMAN, and besides this he heard that GLIKEMAN has forged other notes and disappeared."

In regards to the last deposition, Tugenreich says nothing about the Zelinsky note, he has evidently not seen the Zelinsky note as it has not been produced, but he denies that he signed the Bierenzweig and the Freidenreich notes, but these notes are not attached to the depositions, nor are any copies thereof attached, nor is it shown by either Bierenzweig's or Freidenreich's affidavit or protokol as they call it, that the notes given to them by LEIBA GLIKEMAN bore the signatures of MOSCHEK LEIB JAKOBUV

MAEROV TUGENDREICH, or of M. L. J. M. TOGENDREICH, or M. L. Tugendreich. Mr. Bierenzweig says, that he had received a note *drawn by a* TUGENDREICH, and Mr. Freidenreich says that he received a note *drawn by the order of* M. TUGENREICH. No representation has been made by GLIKEMAN to either Bierenzweig or Freidenreich that these notes were the notes of MOSCEK LEIB JACOBUV MAEROV TUGENREICH, or of M. L. TUGENDREICH, or M. L. J. M. TUGENDREICH, at least no such statement appears in either of the depositions or protokols attached, so that the affidavit or deposition of MOSCHEK LEIB JACOBUV MAEROV TUGENDREICH that he did not draw the notes in question cannot aid the demanding Government in any way in establishing the criminality of the accused nor can TUGENDREICH'S statement that he *suspects* that the text of the notes were written by GLIKEMAN in view of his own statement that he never gave GLIKEMAN any papers, and that he has had no dealings with GLIKEMAN, except that he had made one purchase and paid for it in cash, be given any weight as far as the Government's case is concerned.

The sixth and seventh documents (Record, pp. 37 and 38) consist of the Bierenzweig and Freidenreich depositions in regards to the two notes that they received and which I have already discussed in connection with the TUGENDREICH deposition. Up to this point there appears no evidence of any kind that GLIKEMAN had passed off any forged notes. Out of the Six thousand rubles worth of notes that the Judicial Inquirer mentions in his resolution there now appears

only these two notes of Bierenzweig and Freidenreich of One hundred rubles each, and as I have already pointed out in connection with my discussion as to the TUGENDREICH deposition, there is no evidence that these notes were not signed by the TUGENREICH whose signature appears upon them, both Bierenzweig and Freidenreich base their depositions upon rumors and suspicion.

The Court will readily see that there is a considerable feeling of malice and vengeance running through all these depositions, and evidently because the GLIKEMAN in question had failed in business and is indebted to these people in small sums varying from about One hundred to about Three hundred rubles.

This constitutes the entire case of the Government upon which they seek the surrender of the prisoner, and it is respectfully submitted that these depositions do not contain

> "Such evidence of criminality, as, according to the laws of the place where the fugitive or person so charged shall be found would justify his or her apprehension and commitment for trial if the crime or offense had been there committed." (Article 1 of Treaty.)

And so we say in this case that while the documents offered in evidence as Exhibit "A" are admissible, under Section 5271, Revised Statutes, but as to the character of the evidence that they contain and as to the weight and sufficiency thereof we are governed by common law rules of evidence. No greater weight is to be given to such depositions than if the same statements had been made orally by the deponents. Can it be seriously

contended that a prisoner would be held in this country merely upon a statement not under oath that he had forged a note without having at least the details of the note, or a copy hereof, and without having some direct proof that the note is not a genuine one, or that the prisoner knew that it was false when he passed it?

Applying these principles to the case at bar it is respectfully submitted that there can be but one conclusion, and that is that no case has been made out against the accused sufficient to hold him, and the prisoner must therefore be discharged. It will be remembered that the notes in question are not set forth in the so-called depositions, and from the depositions in evidence it seems to be impossible to ascertain how the notes were signed or whose signature they had thereon, that is, as to whether they were signed M. TUGENDREICH, M. L. TUGENDREICH, M. L. J. M. TUGENDREICH or MOSCHEK LEIB JACOBUV MAEROV TUGENDREICH or some other TUGENDREICH. The only evidence we have is a statement made by MOSCHEK LEIB JACOBUV MAEROV TUGENDREICH, that he did not sign those notes, and it does not appear from either of the depositions that the accused in passing these notes has made any statement or representation that the notes in question were signed by MOSCHEL LEIB JACOBUV MAEROV TUGENDREICH. For all we know these notes may be perfectly genuine and may have been signed by the Tugendreich whose name appears thereon.

As already shown the so-called depositions from Russia constitute all and the only evidence, both as to the identity of the prisoner and as to his criminality. These documents are not even sworn

to; they are mere declarations of the accusers who are evidently creditors of the accused, who ever he may be. They recite nothing but rumors and suspicion; and surely no Magistrate would think for a moment of holding any one upon such proof. Is the United States to surrender a man and permit him to be transported under lock and chain for thousands of miles upon evidence of this character, only to learn perhaps that he is not the man that is wanted or that no crime has been committed? Is not the prisoner at bar who, according to the very depositions referred to, had been a merchant in Lodz for some years, and being charged with forging only three notes of $50 each entitled to the same safeguards and protection of the law that American Institutions affords even the blackest criminal? Does not the fact that he remained right within the city of New York without attempt to escape or conceal his identity for about five months after he had learned that the Russian government had instituted extradition proceedings form a very strong presumption of his innocence?

Point III.

THERE IS NO LEGAL PROOF IN THE CASE AT BAR ESTABLISHING THE IDENTITY OF THE PRISONER BUT ON THE CONTRARY THE EVIDENCE SHOWS AFFIRMATIVELY THAT THE PRISONER IS NOT THE MAN WHO IS ALLEGED TO HAVE COMMITTED THE CRIME.

In order to hold the prisoner three specific points must be established. First. The identity of the prisoner. Second. That a crime has been committed, and Third. That the prisoner has committed it. What I have said above in respect to the

evidence as to the criminality of the accused applies with still greater force to the question of identification. On this point we have no deposition or statement of any witness. The description contained in the papers in evidence as Exhibit "A" which includes the photograph has not been furnished by any of the deponents. It is a mere endorsement upon the third document which I suppose is a warrant of arrest, but not one of the complainants or witnesses has made any statement in respect to the identity or description of the person they had in mind when they made these accusations. Moreover, it appears affirmatively that in many essentials and important features the prisoner at bar does not answer to the description contained in the Russian warrant of arrest. Such for instance, as the age which is given as 45, while the prisoner does not appear to me more than between 32 and 35 years (Record, p. 20), the color of his eyes is likewise different (Record, p. 20), and so also do we find that discrepancy in the name, the deponents all claiming that they were dealing with LEIBE GLIKEMAN while the photograph is that of one LEIBE LEVIK PINKUSOV GLIKEMAN.

The description of the alleged offender contained in the endorsement on the warrant is incompetent evidence, inasmuch as it does not appear anywhere in the documents that this description has been given by any of the witnesses or by any of the complainants. Not one of the witnesses or complainants whose deposition is attached to and form a part of Exhibit "A" has identified the photograph as being that of the man whom they accuse as passing the notes in question. Moreover, the accused now before this court

is thirty-five years of age and not forty-five years of age (Record, p. 20). Furthermore, the name of the accused as stated in the resolutions of the Judicial Inquirer and in the depositions attached is LEIBA GLIKEMAN, while the photograph is endorsed as being that of LEIBA LEVIK PIKUSOV GLIKEMAN. His eyes are described as dark eyes but a mere glance at them will show that they are not dark, but that they are rather hazel (Record, p. 20). This is the testimony also of the private detective (Record, p. 20). That the description is not that of the prisoner is best evidenced by the fact that the Pinkerton man refused to identify him when they went to arrest him with the Marshal at the time he was discharged from Ellis Island by reason of which the Marshal refused to execute the warrant.

In this connection it may be proper to quote from the testimony of Rinck, the detective employed by the Russian Government (Record, p. 21).

> "Q. Did you have any conversation with the prisoner when you saw him at Ellis Island, when you— A. When he was discharged from Ellis Island.
>
> Q. You didn't say anything at that time? A. Yes.
>
> Q. Did you say anything at that time to him? A. I was glad that he was discharged and I told him so; and I says I hoped he would have good luck.
>
> Q. You went there with a Deputy Marshal did you not? A. Yes.
>
> Q. You met him when he landed here at the Battery, is that right? A. Yes.
>
> Q. And you went with the Marshal at that time to arrest him under that warrant? A. Yes.

Q. Is that right? A. Yes.

Q. And you declined to arrest him or the Marshal declined to arrest him at that time because you wouldn't identify him, is that so? A. Yes.

Q. Under the same warrant? A. Under the same warrant.

Q. Under the same description that is contained in the papers by which you testify now that he is the same person? A. Yes, sir.

Q. You refused at that time to identify him did you not? A. Yes.

Q. And the Marshal refused to arrest him on that ground? A. He couldn't arrest him unless I identified him.

Q. And you had the same description with you on that day? A. Yes.

Q. What made you change your mind? A. Our instructions were not to have him arrested if there was a different charge to be made against him—the papers were without effect or something of that kind.

Q. Did you not arrest him on December 3rd on the same warrant that you had in your possession in August? A. Yes.

Q. You—rather the Marshal refused to arrest him because you would not identify him? A. Because of my instructions—my instructions were not to arrest him.

Q. Did you go there with the Marshal for the purpose of arresting him? A. I did that on my own responsibility.

Q. Did you go there with the Marshal for that purpose—to arrest him? A. Yes, I did.

Q. Did you tell the Marshal at that time that you would not identify him under that description? A. I said nothing about under that description—I told him I would not identify him, that's all.

Q. Then you subsequently, on December 3rd, arrested him under that same warrant that contained the same description? A. Yes.

Q. And which is the same description which you have testified now represents this man here, the Prisoner? A. Yes, sir, that is the Prisoner."

At any rate it seems to me to be elementary that the accused must be identified by his accusers or by some witness to the crime. The mere description of an accused contained in the warrant of arrest where neither one of the witnesses or complainants upon whose deposition the warrant was issued has given any description of the accused cannot be of any value in determining the identity of the prisoner. And surely, no man should be arrested and surrendered to a government four thousand miles away upon an identification of that kind. The prisoner at bar may or may not be the person intended, but the orderly administration of justice requires that before a person can thus be arrested and sent away as a prisoner for thousands of miles he should be identified in some positive manner or at least there should be a sufficient description of him by his accusers or by some witness.

The description of the prisoner in this case is insufficient because it does not appear that he had been identified by anyone nor does it appear how that description was formed, but on the contrary it appears upon the fact of it that it is not a correct description of the prisoner at bar, nor is it a correct description of the photograph attached. The photograph does not look like that of a man of forty-five years of age, nor does the prisoner look like a man of over thirty-two years of age, not speaking of the difference between the name given in the depositions, to wit, LEIBA GLIKEMAN and the name that appears

in the photograph, to wit, LEIBA LEVIK PINKUSOV GLIKEMAN.

The photograph was neither identified nor authenticated as required by the statute. There is no testimony to the effect that the photograph is that of the man who is alleged to have committed the crime. The mere endorsement upon the warrant "photograph attached" we respectfully submit, does not amount to an allegation that it is a photograph of the person charged with the crime. Moreover no mention of the photograph is made in the certificate of authentication and hence the photograph was improperly admitted in evidence.

Each piece of documentary evidence offered by the agents of the foreign government in support of the charge of criminality should be accompanied by a certificate of the principal diplomatic consular officer of the United States, resident in the foreign country from which the fugitive shall have escaped stating clearly that it is properly and legally authenticated, so as to entitle it to be received in evidence in support of the same criminal charge by the tribunals of such foreign country.

In re Henrich, 5 Blatchf., 414;
In re McPhun, 30 Fed., 60.

Or such certificate should at least be broad enough to cover every piece of evidence that is attached. A photograph enclosed in an envelope attached to the papers is not so authenticated as to make it competent evidence.

The Commissioner himself evidently found no evidence as to the identity of the accused in the so-called depositions for he states in his decision:

> "After carefully considering the testimony I find that the identity of the prisoner is

> sufficiently established by the photograph and by the evidence of the witness Rinck (private detective) as to the conversation he had with the prisoner and with the prisoner's wife when first seen by the Ellis Island officers upon the steamer" (Rec., p. 33).

The photograph may be a good likeness of the prisoner but there is no evidence that it is the photograph of the alleged criminal, and we respectfully submit that the record will show that not a word has been said either by Glucksman or his wife that can be interpreted as an admission of his identity. Rinck's testimony as to the conversation on that occasion will be found on pages 12 to 14 inclusive of the record and all that the prisoner's wife said appears in the following testimony:

> "Q. Did his wife take any part in the conversation? A. Yes.
> Q. Did she say anything to you? A. Yes. She says they are bad friends that are doing that on the other side" (Rec., p. 20).

And so Judge COXE was evidently in doubt as to the prisoner's identity for he says in the opinion (Rec., p. 41):

> "The only question which causes me any difficulty is the question of identity. It would be more satisfactory if someone who knew the prisoner in Lodz could point him out as the forger or the person who passed the forged instruments. However after examining all the relevant papers submitted I am unable to say that the commissioner was without proof in holding the prisoner as the guilty party."

Point IV.

ASSUMING THAT THE EVIDENCE AS TO THE CRIMINALITY IS SUFFICIENT THE PRISONER MUST BE DISCHARGED BECAUSE THE COMPLAINT CHARGES THE ACCUSED WITH HAVING FORGED AND OFFERED FORGED BILLS OF EXCHANGE WHEREAS THE PROOF SHOWS THAT HE HAD FORGED NOTES.

I think it is elementary that if a complaint in a criminal proceedings charges one crime the prisoner cannot be held or convicted upon proof that he committed another crime. Assuming for example, that a prisoner is charged in a complaint with having forged a deed to real property, could he be found guilty or held for trial, if the evidence would show that he had forged a check?

The purpose of the complaint or information or indictment in a criminal proceeding is to apprise the prisoner of the charge that is made against him so that he may prepare for his defence. In criminal practice the rule requiring the pleadings to set forth the precise offence charged has always been followed with more strictness than in civil cases.

A bill of exchange is not a note, they are entirely two separate and distinct documents.

In the Standard Dictionary a bill of exchange is defined as

> "A written order or request from one person to another for the payment of money to a third person."

In Webster's Dictionary a bill of exchange is defined as

> "An order drawn by one person on another directing him to pay money to some specified third person."

In the Negotiable Instruments Law of New York, Section 210 a bill of exchange is defined as

> "A bill of exchange is an unconditional order in writing addressed by one person to another signed by the person giving it requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain to order or to bearer."

A promissory note is defined in Section 320 of the Negotiable Instruments Law, as

> "An unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand or at a fixed time a sum certain in money to order or to bearer."

So we see that a bill of exchange is an instrument requiring three persons, the drawer, the one to whom the bill is directed, and the one to whom the money is to be paid. In other words, the drawer, the drawee and the payee; whereas a note requires but two persons the maker and the payee.

In all of the counts set up in the complaint the accused is charged with having forged bills of exchange, and with having uttered such bills of exchange, while the depositions in evidence show that the accused had forged and uttered notes, and surely evidence that the accused was guilty of criminality in forging notes cannot sustain a complaint charging him with forging bills of exchange any more than one can be held upon a complaint charging him with stealing a horse where the proof shows that he stole a wagon.

Bearing in mind that under the terms of the treaty and under the decision of this Court in Wright *v.* Henkel, 190 U. S., 40, and Pettit *v.* Walsh, 194 U. S., 205, we are to be governed by

the laws of the State of New York. I respectfully submit that the case of

People *v.* Geyer, 196 N. Y., 367

is controlling on this point. In that case the Court of Appeals said:

> "If the indictment charged the accused with stealing a horse and alleged that the latter was of one color or of one age when as a matter of fact it was of another, it is apparent that the court would be justified in allowing an amendment to cure this variation of evidence. The substance of the crime charged in either case would be the larceny of a horse; the latter's age or color would be an inconsequential detail. If on the other hand the indictment having charged the accused with stealing such a horse, the evidence would show that he had in fact stolen a wagon or some entirely different article of personal property than that specified in the indictment it is quite clear that the court would not be justified in amending the indictment to fit such evidence * * * although in either case it might continue to be grand larceny."

In People *v.* Poucher, 30 Hun, (N. Y.) 576, cited with approval by the Court of Appeals in People *v.* Geyer, *supra*, the indictment charged the defendant with stealing a ring and certain *gold coins* and the evidence showed that instead of coin the defendant stole bills and the Court held that the indictment could not be amended by striking out the word coin and inserting the word currency.

See also:

Besck *vs.* State, 44 Tex., 620;
Bishop on Statutory Crimes (3d Ed.), Sec. 346;

Hamilton *vs.* State, 28 Am. Rep., 653;
State *vs.* Jim, 3 Murph., 3;
Com. *vs.* Sweeney, 1 Va. Cas., 151;
McAuly *vs.* State, 7 Yerg., 526;
Johnston *vs.* State Mart. & Yerg., 129;
Johnson *vs.* State, 11 Ohio St., 324;
State *vs.* Carr, 16 So. Rep., 155;
State *vs.* Cullins, 72 N. C., 144.

Under the treaty that requires an offense to be a crime in both countries, it is of course necessary that the laws of Russia should be proven to show that the forging or passing of a forged bill of exchange is a crime. The Russian Statute which is cited on page 2 of the translation of the Russian papers makes it a crime for one to forge the signature of another on a note. There is no other evidence in the papers to show that the forging of a bill of exchange or the passing of a forged paper is a crime under the Russian laws. Surely the Russian Statutes will not be presumed.

His Honor Judge COXE stated in his opinion:

> "I do not overlook the argument of counsel that the commercial paper which was forged is referred to indiscriminately as *notes and bills of exchange*. In my view this is wholly immaterial" (Rec., p. 40).

But Judge COXE has evidently read the English translation of the Russian documents attached to Exhibit A. But that translation was excluded from evidence by consent (Rec., p. 30) and a new and correct translation has been put in evidence by the demanding government as Exhibit B. Record, p. 23 and pp. 33-39. In this translation no mention is made of "*Bills of Exchange*." The forged papers are spoken of invariably as *notes*.

The first translation was manifestly incorrect or the demanding government would have found it unnecessary to voluntarily introduce a new translation and consent to the elimination of the translation attached to Exhibit A. Since Exhibit B is a complete translation of all the Russian documents constituting Exhibit A. Exhibit A has been entirely eliminated from the printed record by stipulation (Rec., p. 42).

In the case of People *v.* Olmstead, 26 N. Y. Supp., 818, the Supreme Court, General Term said:

> "While proceedings before inferior courts are to be liberally construed and informations lodged before committing magistrates are not expected to be drawn with the technical accuracy that an instrument should be, yet such informations taking the place as they do of indictments in superior courts should state with sufficient accuracy the crime charged that the defendant may know the exact offense which it is claimed he has committed so that he may properly prepare his defense, and so also that after he has been tried upon it he may plead it in bar upon any subsequent charge against him for the same offense."

In that case an information in the language of the Penal Code that the defendant voted at a certain time and place without specifying the offense was held bad because it failed to state the facts which constitute the offense. The same rule was laid down in People *v.* Stark, 136 N. Y., in which case the Court said:

> "The principal reason requiring a specific statement of the act is the right which the accused has to be informed of the precise accusation which he is required to defend."

It is particularly essential that the complaints in extradition cases shall describe the crime with some degree of accuracy in order that the accused may avail himself of the benefit of the well established rule of law that he cannot be tried for any other offense than that charged in the extradition proceedings.

U. S. *v.* Rauscher, 119 U. S., 407.
Ex parte Hibbs, 26 F. R., 431.
Field Extra 107.

Point V.

THE COMPLAINT IS LIKEWISE BAD BECAUSE IT FAILS TO SET FORTH FACTS SUFFICIENT TO CONSTITUTE A CRIME.

The three counts in this complaint charging the accused with having committed forgery, that is counts numbered second, fourth, and sixth, simply allege conclusions and do not set forth facts upon which the charge of forgery is based. That these counts are entirely insufficient to apprise the accused of the nature of the crime charged against him is best evidenced by the fact that although they allege three separate and distinct forgeries there is absolutely no difference between any of these counts, all of them reading precisely alike, and no one can tell which of the notes is referred to in either of those counts.

As to the three counts charging the accused with uttering forged papers which are numbered third, fifth and seventh they are absolutely bad for two reasons. First, because the facts are not stated, and second, the mere uttering of a forged paper is not a crime. It must be alleged that the person

uttering the paper must have knowledge that it is a forged paper. Our penal code defining the crime of uttering forged papers, in Section 881, says:

> "A person who knowing the same to be forged or altered and with intent to defraud utters, offers and disposes, etc., is guilty, etc."

So that manifestly in order to be guilty he must have knowledge that the paper is forged, and as this is one of the elements necessary to constitute the crime of uttering forged papers the absence of that allegation renders the complaint bad for failure to state facts sufficient to constitute a crime.

These three counts should have been dismissed altogether. This would leave the complaint with the two counts charging forgery, one of the counts having been dismissed, and I respectfully submit that the depositions or papers in evidence do not show that the accused had forged the notes in question; he may have passed them to complainants and they may be forged notes, but there is nothing to show in the depositions, either that the accused had forged them or that he knew that they were forged when he passed them and so we claim that while the evidence to establish the criminality need not be as weighty as would be required to convict, there must be *some evidence* not mere speculation or suspicion to hold the accused.

Point VI.

THE COMPLAINT IS INSUFFICIENT AND DEFECTIVE AND SHOULD BE DISMISSED UNDER AUTHORITY OF RICE V. AMES, 180 U. S., 371.

While complaints may be made and generally are made by the duly accredited representative of the demanding government upon information and belief, based upon the depositions or papers that he receives from his government, such papers must be annexed to the complaint, and a complaint thus made upon information and belief without annexing such papers is bad and gives the Commissioner no jurisdiction to issue a warrant.

This rule seems to have been laid down by this Court in the case of

Rice *v.* Ames, 180 U. S., 371.

Mr. Justice BROWN in delivering the opinion of the Court, said:

> "The first two complaints, which were dismissed as well as the first count of the complaint under which the proceedings were finally had, were obviously insufficient, since the charges were made solely upon information and belief, and no attempt was made even to set forth the sources of information or the grounds of affiant's belief. This is bad, even in extradition proceedings, which are entitled to as much liberty of construction in furtherance of the objects of the treaty as is possible in cases of criminal nature. Nor is it saved by the fact that Greer described himself as a government detective for the Province of Ontario and duly authorized by the attorney general to act as the agent of the government to prosecute extradition proceedings."

"A citizen ought not to be deprived of his personal liberty upon an allegation which, upon being shifted, may amount to nothing more than a suspicion. While authorities upon this subject are singularly few, it is clear that a person ought not to be arrested upon a criminal charge upon less direct allegations than are necessary to authorize the arrest of a fraudulent or absconding debtor."

"Now it would obviously be inconsistent to hold that depositions, which are admissible upon the hearing, should not also be admitted for the purpose of vesting jurisdiction in the Commissioner to issue the warrant. Indeed, the words of the statute, 'in every case of *complaint*,' seems to contemplate this very use of them. If the officer of the foreign government had no personal knowledge of the facts, he may with entire propriety make the complaint upon information and belief, stating the sources of his information and the grounds of his belief, annexing to the complaint a properly certified copy of an indictment or equivalent proceedings, which may have been found in the foreign country, or a copy of the depositions or witnesses having actual knowledge of the facts, taken under the treaty and act of Congress. This will afford ample authority to the Commissioner for issuing the warrant."

The same rule has been laid down in

Ex parte Lane, 6 Fed. Rep., 38;

and this case has been cited with approval by this Court in the case last mentioned.

The complaint in this case is based entirely upon information and belief, and the complainant says in the Eleventh paragraph that the source of his information and the grounds of his belief, etc., are derived from duly authenticated copies of

papers, etc, that he received from the Empire of Russia, but those papers were not annexed to the complaint and formed no part thereof, and the Commissioner was therefore without jurisdiction and could not issue a warrant thereon, the complaint should have therefore been dismissed, and our motions to that effect was erroneously denied.

In the case of *Ex parte* Lane, 6 Fed. Rep., 35, the Court said on page 38:

> "The complaint is made upon information and belief, and in this respect I think it is fatally defective. The Statute requires a complaint *upon oath* and I think it is not satisfied by a simple allegation that the complainant is informed and believes the petitioner to have committed the offense * * * a person may swear that he has reasons to believe and does believe that a person has committed a crime although his reasons may amount to little more than mere suspicion * * * this, however, is not a complaint upon oath within the meaning of the Statute. The personal liberty of a citizen ought not to be interfered with upon an allegation so loosely framed."

It is contended by counsel for the demanding government that it has always been the general practice to issue warrant upon complaints based merely upon information and belief, but if so, that practice has been condemned by this Court in the case of Rice *v.* Ames, *supra*, in the year 1900 and hence such practice can no longer prevail.

To overcome the serious defects referred to counsel for the demanding government relies on the case of

Grin *v.* Schein, 187 U. S., 181,

but that case in no way qualifies or modifies the

rule laid down in the case of Rice *v.* Ames, *supra*, that a complaint upon information and belief is bad and gives the Commissioner no jurisdiction. The opinions in both cases were written by Mr. Justice BROWN. The question as to the sufficiency of a complaint based upon information and belief was not raised and did not come up for consideration in Grin *v.* Schein.

A number of technical objections have been raised in the case of Grin *v.* Schein, all of them of a mere technical character as to the form of the Russian documents and as to the authority of the Commissioner to act, all of which have been overruled by the Court. Neither one of the objections considered in that case are involved in the case at bar.

The objections to the complaint in the Grin *v.* Schein case were those based upon the form of the Russian papers, and the Court held that we could not be expected in this country to be familiar with Russian forms of procedure, nor could we expect the Russian government to be familiar with our forms; but there is nothing in the Grin *v.* Schein case that can be construed as changing the well established rule that a complaint must set forth facts and not mere conclusions of law, and that the facts set forth must be sufficient to constitute a crime in *both* countries. Nor did it change the rule laid down in Rice *v.* Ames.

In *Ex parte M'Cabe*, 46 Fed. Rep., pp. 368-369, the Court said:

"The second ground of objection assumes that the warrant cannot legally issue by the committing magistrate in the absence of a complaint made under oath. The statute which names the State

Judge as a proper officer to issue the warrant also, in the same section, makes the sworn complaint a prerequisite to its issuance. It is provided by the statute that the officer designated "may, upon complaint made under oath, charging any person, * * * issue his warrant for the apprehension for the person so charged." "This shows," says Judge MITCHELL, "that without a sufficient complaint on oath there is no jurisdiction to issue the warrant." Further, he says:

> "It was argued that on *habeas corpus* the judge should not go beyond the warrant and if that were regular, he should remand the prisoner. The answer to this is that the Commissioner has no power to issue the warrant, and no jurisdiction under the act of Congress until a complaint on oath be made before him. Those, therefore, who opposed the discharge of the prisoner, in order to show that there is a valid warrant, are bound to show that it was issued on such complaint on oath, and to show this, they must produce the complaint. If when produced it shows its original invalidity, it must fall to the ground and the warrant with it."
>
> *In re* Heilbonn, 1 Parker, Crim. R., 436.

See, also:

> *In re Farez, supra.*
> *In re Heinrich*, 5 Blatchf., 414.
> *Ex parte Lane, supra.*
> *In re Roth*, 15 Fed. Rep., 507.
> Whart Confl. Law, Sec. 848.
> Spear, Extradition, p. 250; 7 Amer. & Eng. Enc. Law, 623, and Note.

"Authorities to show that the warrant should be supported by affidavit would seem to be superflu-

ous. The language of the statute is susceptible to but a single construction that by its terms a sworn complaint is indispensable as a basis for the warrant admits of no question."

Point VII.

THE MARSHAL'S RETURN TO THE WRIT IS INSUFFICIENT BECAUSE IT SHOWS THAT BOTH THE WARRANT AND THE FINAL COMMITMENT ARE OF NO LEGAL FORCE INASMUCH AS NO CRIME IS RECITED THEREIN.

In both the Warrant of Arrest (Rec., p. 3) and the final commitment (Rec., p. 5) the prisoner is charged "with the commission * * * of the crimes of forgery and the utterance of forged papers." We respectfully submit that the forging of a mere piece of paper does not constitute the crime of forgery. Such paper must be one specified in our Penal Code.

Unless the paper comes within the different classes of paper specified in the Penal Code no forgery has been committed.

In *People* v. *Drayton*, 168 N. Y., p. 12, the Court of Appeals said:

> "The rule of pleading established in this state in such cases is that if the paper set forth in the indictment and of which the forgery is predicated does not, either upon its face or by the averment of extrinsic facts, affirmatively appear to be an instrument which if genuine, would be operated, the indictment is bad as failing to state facts sufficient to constitute a crime. (People *vs.* Shall, 9 Cowen, 778; People *vs.* Savaage, 5 N. Y. Cr. Rep., 541; Fadner *v.* People, 33 Hun, 240; People

vs. Wilson, 6 Johns., 320; Cunningham *vs.* People, 4 Hun, 455; People *vs.* Harrison, 8 Barb., 560.) The question here is whether the paper on its face creates or purports to create a pecuniary demand or obligation since there are no extrinsic facts averred which would render it operative for any such purpose. It purports to be the act of a corporation, and McCarthy is the corporate agent who is represented as having executed it. It is not stated who McCarthy is, or that he was an officer of the corporation with authority real or apparent to act for it, or whether he is a real or fictitious person. But the paper at most was nothing but an offer by a corporation to some undisclosed person or corporation, real or fictitious, to pay a certain sum of money upon the rendition of certain services. It was not in itself a contract or obligation of any kind. It might have been an offer to make a contract, but it does not appear that any one accepted the offer, or acted upon it."

While the warrant or the final commitment need not set forth the facts constituting the crime it must nevertheless recite that a crime has been committed. We have no such crime as "forging a paper." Hence such warrant can no more authorize the detention of the prisoner than if it would recite that he was guilty of failing to pay his debts. The Marshal's return was therefore wholly insufficient. There was no authority for the appellant's imprisonment.

Conclusion.

This is an extraordinary proceeding and we respectfully submit that before a person within the jurisdiction of the United States is to be appre-

hended and deprived of his liberty and sent away for about four thousand miles, as a prisoner to stand trial upon a criminal charge the greatest caution should be exercised. The prisoner stands silent, because under our practice his declaration of innocence cannot be considered in such cases, nor could any amount of evidence in his favor save him from being surrendered if a *prima facie* case has been made out against him, because he is not entitled to a trial in this country, as has been said by Judge BROWN.

In re extradition of Wedge, 15 Fed. Rep., 866:

> "If this were recognized as the legal right of the accused in extradition proceedings, it would give him the option of insisting upon a full hearing and trial of his case here; and that might compel the demanding government to produce all its evidence here, both direct and rebutting, in order to meet the defense thus gathered from every quarter. The result would be that the foreign government though entitled by the terms of the treaty to the extradition of the accused for the purpose of a trial where the crime was committed, would be compelled to go into a full trial on the merits in a foreign country, under all the disadvantages of such a situation, and could not obtain extradition until after it had procured a conviction of the accused upon a full and substantial trial here. This would be in plain contravention of the intent and meaning of the extradition treaties which are designed to secure a trial in the country where the crime was committed, through the extradition of the accused upon sufficient proof according to our law, to justify a commitment here."

Under such circumstances it would seem that before subjecting the accused to the hardship of being taken abroad as a prisoner for thousands of

miles, the judicial officer should require more than mere speculation or inferences.

Likewise, I must say that the papers in this case show that the real purpose of this proceeding is not the forgery charge, but that it had been instituted by creditors as a matter of personal spite, malice and vengeance.

In *Grin* v. *Shine*, 187 U. S., pp. 133-134, the Court said:

> "Good faith towards foreign powers with which we have entered into treaties of extradition, does not require us to surrender persons charged with crime in violation of those well settled principles of criminal procedure which from time immemorial characterized Anglo-Saxon jurisprudence. Persons charged with crime in foreign countries who have taken refuge here are entitled to the same defenses as others accused of crime within our own jurisdiction."
>
> "Care should doubtless be taken that the treaty be not made a pretext for collecting private debts, wreaking individual malice, a forcing the surrender of political offenders."

It is quite impossible to understand why the fundamental principle in criminal law, that the accused shall have the benefit of the presumption of innocence, and that all proceedings against him shall be strictly construed against the prosecution, should not apply to extradition cases. "The principle," remarked Lord ABINGER, C. B., adopted by Lord TENDERDEN, that a "penal law ought to "be construed strictly, is not only a sound one, "but the only one consistent with our free institu-"tions. The interpretation of statutes has always "in modern times been highly favorable to the

"personal liberty of the subject, and I hope will "always remain so."

Murray *ex.* Reg., 7 Q. B., 707;
United States *ex.* Wiltberger, 5 Wheat., 95.

We think that there is no persuasive force in the proposition that Courts should seek to rid the country of persons whose extradition is sought. Such persons are as fully entitled to the equal protection of the laws as are the citizens of the United States; their liberty is no less sacred than is the liberty of the citizen.

Our laws provide every safeguard for the protection of one accused of crime. No judge would criticise one on trial upon a criminal charge for availing himself of every technicality known to the law in order to free himself and yet a different rule seems to have been followed by some judges in extradition cases and evidently upon the theory that we ought not to make this country an asylum for fugitive criminals. True it is that the interest and welfare of the people in this country demands that we exclude from our shores not only criminals but all other undesirable immigrants, but are we to surrender every one who is under the protection of our laws because he is alleged to have committed a crime in some foreign country without first ascertaining, by the regular and well established methods of procedure as to whether or not a crime has in fact been committed and that the person whose extradition is sought is likely to have committed it? Are we obliged to surrender every one against whom a mere complaint is lodged by some foreign government without applying the ordinary legal tests that we

would apply to determine whether one charged with the commission of crime in this country should be held for trial or not?

Are we to exile everyone so accused and subject them to the hardships of traveling thousands of miles under lock and chain only to reach the point of destination and there to learn that it was all a mistake, and that he is not the man wanted or that no crime had at all been committed?

The matter of extradition not only has for its purpose the deprivation of liberty but it is a direct invasion of the political right of habitation within our territory, wherever and whenever the exile or banishment from our shores is wrongful; therefore every reason exists for construing the law strictly and exacting a rigid adherence to its requirements. It is entitled to serious consideration whether the appellant here shall be deprived of the protection given the rights of man by the laws of the United States and turned over to the inhumanity that has made revolting the penal system of Russia. Certainly nothing less than a clear case and a precise compliance with the law of extradition can justify the enforced exile of one who is under the protection of our laws. The notion that the individual is of such little consequence that he is to be sacrificed at the pleasure of the sovereign, is a survival of the times when monarchy was omnipotent and the subject had no rights that were worthy of consideration. Under our laws every alien within our jurisdiction has the same right to the equal protection of our laws as is possessed by a citizen; embraced within that protection is the fundamental right to the presumption of innocence and the right to have the charge and the sufficiency of the evidence tested

by the laws of the State in which he is apprehended.

Had this been simply a question of standing trial upon the charge pending against him the prisoner at bar would have offered no serious resistance to the application for his surrender. But his exile to Russia means more than a mere trial of a criminal charge. It means that the prisoner must become and remain perhaps for lifetime the object of Russia's bitter persecution and its cruel and inhuman treatment that are shocking and revolting to civilized humanity all over the world.

The order of the Court below should therefore be reversed and the prisoner discharged, all of which is

Respectfully submitted,

CHAS. DUSHKIND,
Counsel for Appellant.

FILED.
APR 12 1911
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1910

No. 944

LLIBEL PINCUSOV GLUCKSMAN

Appellant

vs

WILLIAM HENKEL, United States Marshal, S. D., N. Y., *et al.*

Appellees

APPELLANT'S REPLYING BRIEF

CHAS. DUSHKIND
Counsel for Appellant

Supreme Court of the United States.

LLIEBEL PINCUSOV GLUCKSMAN, Appellant, against WILLIAM HENKEL, United States Marshal for the Southern District of New York, *et al.*, Appellees.	October Term, 1910. No. 944.

Reply Brief for Appellant.

I.

On page 2 of appellees' brief it is stated that

> "Testimony was also introduced for the purpose of showing admissions made by the appellant upon his arrival in the United States and also to establish his identity."

I regret to be compelled to except to the correctness of the interpretation thus placed upon the testimony by counsel for the appellees. The only oral testimony that can have any bearing on the question of criminality or identity is that of detective Rinck on pp. 13, 14, 18, 21 and 22 of the record and it is respectfully submitted that far from showing admissions made by the appellant the testimony shows that the prisoner was persistent in his protestations of innocence and that the detective himself refused to assume the responsibility of identifying the appellant when

the Marshal attempted to arrest him two weeks after he had thus interviewed the appellant on the steamer.

II.

On page 4 of the appellees' brief appears the following statement:

> "Upon the hearing upon the writs of habeas corpus and certiorari the statement was made to the court that the appellant had not had an opportunity to present any evidence in his own behalf and at that time the learned court stated that it would remit the proceedings to the commissioner to enable the appellant to introduce any testimony he might have in his behalf and counsel thereupon informed the learned court that he had no proof or evidence to offer."

We must question the propriety of this statement since the record contains no part of the discussion before the court below. Moreover the Commissioner having issued his final commitment could no longer entertain jurisdiction over the case and what I did state to the court, was that we prefer to take the case up to the Supreme Court as it stands and that I had no desire to offer any evidence on behalf of the prisoner because the Commissioner had already issued a final commitment. It is well settled that if the demanding government establishes a *prima facie* case the fugitive has to be surrendered no matter what evidence he may offer in his own behalf for the demanding government is entitled to have the case tried within its own jurisdiction

In re Wedge, 15 Fed. Rep., 866.

Hence I think it would have been unwise indeed for counsel to advise the prisoner in the case at bar to offer evidence in his own behalf after the Commissioner had decided to commit him.

The record will show pages 30 to 33 that after the demanding government closed its case various motions have been made on behalf of the prisoner based upon the government's case and upon the adjourned day the Commissioner simply decided the motions and also decided to commit the prisoner before any statement had been made on the part of the prisoner as to whether he desired to offer any evidence or not.

III.

Counsel for appellees further claims that:

> "There can be no dispute that in all other respects the description of the accused is identical with that contained in the original papers."

But we contend that the description contained in the original papers is of no value because it is not a description furnished by any witness or by any of the accusers, a mere endorsement upon the warrant we think should not be regarded as sufficient for the purpose of sending the appellant for thousands of miles as a prisoner.

IV.

It is also stated in appellees' brief (p. 14), that "both he and his brother attempted to bribe the marshal—to permit him to go free." For a correct version of that occurrence it would be best to

quote the testimony of the United States Marshal (Rec., p. 26):

> "Q. State what took place at the time you placed the accused under arrest?
>
> A. Well the defendant and another gentleman was going along on Avenue A or C—I am not sure which, and the young man could speak English and he came to me and says, 'I will give you $3 if you let this man go,' and in a joking way I told him—I presumed he was ignorant of the law—I referred him to Rinck, and Rinck and him had a conversation over on the other side, but I didn't hear it.
>
> Q. Did the defendant say anything to you at that time?
>
> A. He never said a word.
>
> Q. Said nothing to you after you placed him under arrest?
>
> A. No."

We think it was entirely unfair to thus state in the brief that appellant has attempted to bribe when it is perfectly apparent that the appellant did not even know what his brother was saying to the Marshal.

V.

Article 111 of the Treaty provides:

> "Nor shall any person surrendered be tried or punished for any offense other than that for which the extradition was granted."

The same rule has been laid down by this Court in

> United States *vs.* Rauscher, 119 U. S., 407.

The Government has thus taken great care to protect alleged fugitives against being extradited for one offense and punished for another. It seems to be perfectly clear that this clause would lose its force if extradition be granted upon complaints that fail to specify the crime with sufficient definiteness so that it might be pleaded as a bar against prosecution for other offenses. The complaint in the case at bar is clearly insufficient for this reason.

VI.

The law as to extradition cases as stated by counsel for appellees is indeed well settled. It is settled that Treaties must be liberally construed and that extradition proceedings should not be conducted in any technical spirit with a view to prevent extradition. But surely the courts have never held that the fundamental principles of law or the ordinary safeguards that the law provides for the protection of one accused of crime may be dispensed with in extradition proceedings.

In the case at bar we have an unsupported and uncorroborated complaint upon information and belief that would be insufficient even to issue an attachment against property; we have no evidence of criminality and no evidence as to the identity of the accused; the complaint is indefinite and does not contain facts sufficient to constitute a crime; while, on the other hand, the so-called depositions show upon their face that this is

clearly a case that comes within the views expressed by the Court in

Grin *v.* Shine, 187 U. S., 134,

in the following language:

> "care should doubtless be taken that the Treaty be not made a pretext for collecting private debts, or wreaking individual malice."

Respectfully submitted,

CHARLES DUSHKIND,
Counsel for Appellant.

[9504]

MAR 16 1911
JAMES H. McKENNEY,

IN THE

SUPREME COURT OF THE UNITED STATES.

LEIBEL PINCUSOV GLUCKSMAN,
Appellant,

against

WILLIAM HENKEL, United States Marshal for the Southern District of New York, and VLADIMAR M. YOURIEFF, Imperial Russian Vice Consul in the City of New York,
Appellees.

October Term, 1910.
No. 944.

APPELLANT'S MOTION FOR ADVANCEMENT OF CAUSE.

CHARLES DUSHKIND,
Counsel for Appellant.

APPEAL PRINTING COMPANY, NEW YORK.

Supreme Court of the United States.

LEIBEL PINCUSOV GLUCKSMAN,
Appellant,

against

WILLIAM HENKEL, United States Marshal for the Southern District of New York, and VLADIMAR M. YOURIEFF, Imperial Russian Vice Consul in the City of New York,
Appellees.

No.....

October Term, 1910.

Notice of Motion.

2

Sirs:

Please take notice that upon the annexed affidavit of Charles Dushkind verified the 4th day of March, 1911, a motion will be made at a Stated Term of the Supreme Court of the United States to be held in the City of Washington District of Columbia, on Monday March 13th, 1911, at the opening of the Court on that day or as soon thereafter as counsel can be heard for an order advancing this cause and setting it down for argument upon a day certain fixed by the Court. 3

Yours, &c.,
CHARLES DUSHKIND,
Counsel for Appellant.

To

William Henkel, Esq.,
United States Marshal, Southern District of New York.

Vladimar M. Yourieff,
Imperial Russian Vice Consul in the City of New York.

Appellees.

SUPREME COURT OF THE UNITED STATES.

LEIBEL PINCUSOV GLUCKSMAN,
Appellant,

against

WILLIAM HENKEL, United States Marshal for the Southern District of New York, and VLADIMAR M. YOURIEFF, Imperial Russian Vice Consul in the City of New York,
Appellees.

No.....

October Term, 1910.

Statement.

Statement of Matters Involved in This Appeal.

The appellant has been arrested and is now held in custody under a warrant issued by Thomas Alexander, Esq., a United States Commissioner for the Southern District of New York, upon a complaint of the Russian Vice Consul in New York City, demanding the extradition of the appellant who is alleged to have forged three bills

of exchange of One hundred roubles each in Russia under the treaty between the United States and the Russian Empire. The appellant contends that the Commissioner had not jurisdiction to issue the warrant: that no evidence has been presented to establish that the appellant is the person accused of the alleged criminal acts, but on the contrary the evidence shows affirmatively that the appellant is not the person described in the accusing documents; that no proof of any kind has been adduced to show the criminality of the appellant; that the Commissioner acted wholly without jurisdiction in issuing the final commitment; that there was no evidence whatever to substantiate any of the allegations in the complaint; that he was held wholly without any evidence either as to his identity or criminality; that the complaint was insufficient to give the Commissioner jurisdiction; that the acts shown to have been committed by the accused do not constitute an extraditable offence within the meaning of the treaty between the United States and the Russian Empire; that the commitment is bad and fatally defective upon the face thereof; that the commitment was issued by the Commissioner before the appellant has had an opportunity to offer evidence in his own behalf; and that the appellant is held by the Marshal without authority of law. Writs of habeas corpus and certiorari have been sued out by the appellant and both writs were dismissed by the United States Circuit Court for the Southern District of New York, and this appeal has been taken from the final decree dismissing writs.

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8

9

10 **Reasons for This Application to Advance.**

The reason for this application is that the appellant is now in custody of the United States Marshal and is now and has been confined in jail since December 22nd, 1910. As this honorable Court will probably adjourn in the month of June the appellant would necessarily be compelled to remain in jail during the entire summer and perhaps for a long time thereafter unless this cause be advanced. Aside from the hardship of being imprisoned the prisoner's health has been seriously impaired by reason of his long confinement and any extended continuation of such imprisonment
11 is likely to produce fatal results.

CHARLES DUSHKIND,
Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

LEIBEL PINCUSOV GLUCKSMAN,
Appellant,

against

WILLIAM HENKEL, United States Marshal for the Southern District of New York, and VLADIMAR M. YOURIEFF, Imperial Russian Vice Consul in the City of New York,
12 Appellees.

United States of America,
Southern District of New York, } ss.:

Charles Dushkind, being duly sworn, deposes

and says: I am counsel for the appellant herein. 13
This is an appeal from a final decree of the United States Circuit Court for the Southern District of New York, dismissing writs of habeas corpus and certiorari sued out by the appellant to determine the legality of his imprisonment. The appellant has been arrested on or about the 15th day of December, 1910, upon a warrant issued by Thomas Alexander, United States Commissioner for the Southern District of New York, upon a complaint filed by the Russian Vice Consul alleging that the appellant has committed larceny in Russia and demanding that he be surrendered to the Russian Government, under the treaty between the United 14
States and the Empire of Russia.

On December 22d, 1910, this complaint was dismissed by the Commissioner and a new complaint was thereupon filed on behalf of the Russian Government charging the appellant with having forged three bills of exchange of One hundred roubles each. A new warrant was issued and the appellant was re-arrested. Thereafter the Commissioner issued a final commitment for the extradition of the appellant under the treaty between the United States and the Empire of Russia.

Thereafter the prisoner obtained writs of habeas 15
corpus and certiorari which were subsequently dismissed and from the final decree dismissing said writs this appeal has been taken. The appellant has been imprisoned since the 15th day of December, 1910, and he is still held in custody of the United States Marshal.

The order dismissing the writs was made on February 6th, 1911, and the appeal herein was allowed on February 21st, 1911. The record was

16 filed with the Clerk of this Court on the 4th day of March, 1911, and is now No. 944 on the calendar, October Term, 1910.

In the regular course this cause cannot come up for argument until next year and unless the cause be advanced the appellant would necessarily have to remain in jail during all that time.

Wherefore we respectfully pray that the cause may be advanced and set down for argument on a day certain fixed by the Court.

CHAS. DUSKIND.

Sworn to before me this
4th day of March, 1911.

17 Morris Weiss,
Notary Public,
New York County.

[9312]

18

FILED.
APR 4 1911
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 944.

LIEBEL PINCUSOV GLUCKSMAN,
Appellant

against

WILLIAM HENKEL, United States Marshal for the Southern District of New York, and VLADIMIR M. YOURIEFF, Imperial Russian Vice Consul in the City of New York,
Appellees

BRIEF FOR APPELLEES.

FREDERIC R. COUDERT,
CHARLES A. CONLON
Counsel for Appellees,
2 Rector Street,
New York City.
New York.

B. H. TYRREL, PRINTER, 206-8 FULTON STREET, NEW YORK.

Supreme Court of the United States,

OCTOBER TERM, 1910.

No. 944.

LEIBEL PINCUSOV GLUCKSMAN,
Appellant,

against

WILLIAM HENKEL, United States Marshal for the Southern District of New York, and VLADIMIR M. YOURIEFF, Imperial Russian Vice Consul in the City of New York,
Appellees.

Brief for Appellees.

This is an appeal from a decree of the United States Circuit Court for the Southern District of New York, dismissing writs of habeas corpus and certiorari sued out by the appellant to determine the legality of his imprisonment, which decree was entered in the office of the Clerk of the United States Circuit Court for the Southern District of New York, on the 20th day of February, 1911.

This proceeding was commenced by virtue of the Treaty between the United States of America

and the Empire of Russia, signed at Washington March 16-28, 1887, ratifications exchanged at St. Petersburg April 9-21, 1893, and proclaimed June 5th, 1893, for the extradition of one LEYBA alias LEWITT GLIKSMAN.

The complaint was made by the Imperial Russian Vice Consul, acting Imperial Russian Consul General at the City of New York, charging the appellant with the crimes of forgery and the utterance of forged papers.

The complaint charges three distinct crimes of forgery and three distinct crimes of utterance of forged papers. The proceeding was instituted before Thomas Alexander, Esq., United States Commissioner, authorized to take cognizance of extradition proceedings who issued his warrants for the arrest of the accused. At the hearings before said Commissioner, depositions duly authenticated by the United States Ambassador at St. Petersburg, were introduced in evidence in support of the charges contained in the complaint. These depositions show that the appellant in or about the month of June, 1910, at Lodz, in the Empire of Russia, had forged the signature of one MOSCHEK LEIBA TUGENDRAICH to three certain Bills of Exchange each for the sum of one hundred (100) roubles and that the appellant uttered said forged instruments to one JUDKA SELMANOV BIERENZWEIG, and to one BINEM BENZABILEV FRAIDENRAICH and to one CHAIM ISAAKOV ZELINSKY. The original papers received from Russia contained a photograph and a description of the appellant which were also received in evidence. Testimony was also introduced for the purpose of showing admissions made by the appellant upon his arrival in the United States and also to establish his identity.

Upon the close of the Demanding Government's case, a motion to discharge the accused upon various grounds was made, and after due consideration by the Commissioner, it was denied. The appellant not desiring to present any evidence on his behalf, the Commissioner ordered his commitment for extradition in accordance with the Treaty.

Writs of habeas corpus and certiorari were thereupon sued out by the appellant in the United States Circuit Court for the Southern District of New York, and came on to be heard before Hon. ALFRED C. COXE, United States Circuit Judge. After due deliberation said writs of certiorari and habeas corpus were dismissed and a decree to this effect duly entered. From the decree of the United States Circuit Court an appeal has been taken to this Court.

The appellant contends:

I.—That the Commissioner had no jurisdiction to issue the warrant.

II.—That no evidence has been presented to establish that the appellant is the person accused of the crimes charged;

III.—That no proof has been adduced to show the criminality of the appellant;

IV.—That the Commissioner acted without jurisdiction in issuing the final commitment;

V.—That there was no evidence to substantiate any of the allegations in the complaint;

VI.—That the complaint was insufficient to give the Commissioner jurisdiction;

VII.—That the acts shown to have been committed by the accused do not constitute an extraditable offence within the meaning of the Treaty;

VIII.—That the commitment is fatally defective upon the face thereof;

IX.—That the commitment was issued by the Commissioner before the appellant had an opportunity to offer evidence in his behalf.

Before taking up for discussion the contentions made on behalf of the appellant, we desire to state that the last contention made by the appellant is absolutely without foundation. No request was made before the Commissioner for an opportunity to present any evidence on behalf of the accused. Upon the hearing upon the writs of habeas corpus and certiorari the statement was made to the Court that the appellant had not had an opportunity to present any evidence in his own behalf and at that time the learned Court stated that it would remit the proceedings to the Commissioner to enable the appellant to introduce any testimony he might have in his behalf, and counsel thereupon informed the learned Court that he had no proof or evidence to offer.

The abandonment of this proposition in appellant's brief eliminates the necessity of further comment.

POINT I.

The appellant contends that the Commissioner was without jurisdiction to issue the warrant; yet the Commissioner acted in exact accord with the Treaty and the Statutes.

In this connection it would seem to be only necessary to call attention to Article VII of the Treaty between the United States and Russia, which provides:

> "It shall be lawful for any competent ju-
> "dicial authority of the United States, upon
> "production of a certificate issued by the
> "Secretary of State, stating that request has
> "been made by the Imperial Government of
> "Russia for the provisional arrest of a per-
> "son convicted or accused of the commission
> "therein of a crime or offense extraditable
> "under this Convention, and upon complaint,
> "duly made, that such crime or offense has
> "been so committed, to issue his warrant for
> "the apprehension of such person."

The procedure in matters of extradition has been prescribed in the United States Revised Statutes. Section 5270 provides as follows:

> "Sec. 5270. Whenever there is a treaty or
> "convention for extradition between the
> "government of the United States and any
> "foreign government, any Justice of the Su-
> "preme Court, circuit judge, district judge,
> "commissioner, authorized so to do by any
> "of the courts of the United States, or judge
> "of a court of record of general jurisdiction
> "of any State, may, upon complaint made
> "under oath, charging any person found

"within the limits of any State, District or "territory, with having committed within the "jurisdiction of any such foreign government "any of the crimes provided for by such "Treaty or Convention, issue his warrant for "the apprehension of the person so charged, "that he may be brought before such Justice, "Judge, or Commissioner, to the end that the "evidence of criminality may be heard and "considered. If, on such hearing, he deems "the evidence sufficient to sustain the charge "under the provisions of the proper Treaty "or Convention, he shall certify the same, "together with a copy of all the testimony "taken before him, to the Secretary of State, "that a warrant may issue upon the requi- "sition of the proper authorities of such "foreign government, for the surrender of "such person, according to the stipulations "of the Treaty or Convention; and he shall "issue his warrant for the commitment of the "person so charged to the proper jail, there "to remain until such surrender shall be "made."

In accordance with the Treaty and this Statute, complaint was duly made by the acting Imperial Russian Consul General at New York upon oath charging the accused with the crimes of forgery and the utterance of forged papers; upon such complaint verified before him, the usual certificate of the Secretary of State having been produced, the Commissioner who was duly appointed and authorized to take cognizance of all applications for extradition, thereupon issued his warrant for the arrest of the accused. There is no question that the United States Commissioner was duly appointed to act; all that was required was that a complaint should be made before him under oath charging one of the crimes enumerated in the Treaty.

The appellant places great reliance in support of his contention that the Commissioner did not have jurisdiction to issue the commitment upon the decision of the Court in Rice *vs.* Ames, 180 U. S. 371.

A careful consideration of that case shows that the facts were not the same as the case at bar. The proceeding was had under the Treaty between Great Britain and the United States; several complaints had been made and the first two were dismissed as the charges were made *solely* upon information and belief and no attempt was made even to set forth the sources of deponent's knowledge or the grounds of his belief. The contention of counsel is that under the decision in that case, that even where the source of deponent's knowledge and the grounds of his belief are given, still the complaint must be accompanied by a copy of the indictment or equivalent proceeding or of the depositions of the witnesses.

A careful reading of the decision, however, shows that all that is held is that where the party making the complaint had no knowledge of the facts, he might, with entire propriety, state the sources of his knowledge and the grounds of his belief and might also annex a copy of the depositions or a certified copy of the indictment. As was said by the Court in its opinion:

> "The first assignment of error is to the "effect that the commissioner issuing the "warrant had no jurisdiction, because the "complaint of Greer was upon information "and belief, and not such as was required by "the treaty, or by section 5270 of the Revised "Statutes. The first two complaints, which "were dismissed, as well as the first count of "the complaint under which the proceedings

"were finally had, were obviously insufficient, "since the charges were made solely upon in- "formation and belief, and no attempt was "made even to set forth the sources of in- "formation or the grounds of affiant's be- "lief. * * *"

"We do not wish, however, to be understood "as holding that, in extradition proceedings, "the complaint must be sworn to by persons "having actual knowledge of the offence "charged. This would defeat the whole ob- "ject of the treaty, as we are bound to assume "that no foreign government possesses "greater power than our own to order its citi- "zens to go to another country to institute "legal proceedings. This is obviously im- "possible. * * *"

"Now, it would obviously be inconsistent "to hold that depositions, which are admis- "sible upon the hearing, should not also be "admitted for the purpose of vesting juris- "diction in the commissioner to issue the "warrant. Indeed, the words of the statute, "'in every case of *complaint*,' seem to con- "template this very use of them. If the offi- "cer of the foreign government has no per- "sonal knowledge of the facts, he may with "entire propriety make the complaint upon "information and belief, stating the sources "of his information and the grounds of his "belief, and annexing to the complaint a "properly certified copy of any indictment "or equivalent proceeding, which may have "been found in the foreign country, or a copy "of the depositions of witnesses having ac- "tual knowledge of the facts, taken under "the treaty and act of Congress. This will "afford ample authority to the Commission- "er for issuing the warrant."

The complaint here will be seen to be in the usual form and in accordance with the rules of

practice; it states the sources of deponent's knowledge and the grounds of his belief. In many cases it is necessary to make complaints upon information contained in cables and if it were necessary to await the arrival of depositions or a certified copy of an indictment or equivalent instrument, before the complaint could be made in the form contended for by counsel for the appellant, the interests of justice might very well be impaired if not actually defeated and the guilty allowed to escape.

In *ex Parte* Sternamann, 77 Fed. Rep. 595, the Court had this situation in mind when it said:

> "The complaint may, in some instances, "be upon information and belief. The exi- "gencies may be such that the criminal may "escape punishment unless he is promptly "apprehended by the representatives of the "country whose laws he has violated. From "the very nature of the case it may often "happen that such representative can have "no personal knowledge of the crime."

All that is required under the treaty to secure the provisional arrest of a person charged with the commission of a crime is that a complaint shall be made under oath before a properly authorized officer and these requirements have been complied with.

As was said by the Court in the later case of Grin *v.* Shine, 187 U. S. 181, where this very Treaty with Russia was before the Court and where every possible objection had been raised by counsel for the accused:

> "All that is required by §5270 is that a com- "plaint shall be made under oath. It may "be made by any person acting under the

"authority of the foreign government having "knowledge of the facts, or, in the absence "of such person, by the official representa- "tive of the foreign government based upon "depositions in his possession, although un- "der the first article of the treaty the ac- "cused can only be *surrendered* upon a "'requisition' of the foreign government, "and by art. VI. such requisition must be "made by the 'diplomatic agent of the de- "manding government,' and in case of his "absence from the seat of government, by "the 'superior consular officer.' It is true "that Art. VII. of the treaty provides that "it 'shall be lawful for any competent judi- "cial authority of the United States, upon "production of a certificate issued by the "Secretary of State, stating that request has "been made by the Imperial Government of "Russia for the provisional arrest of a per- "son convicted or accused of the commis- "sion therein of a crime or offense extra- "ditable under this convention, and upon "complaint, duly made, that such crime or "offence has been so committed, to issue his "warrant for the apprehension of such per- "son'; and in this case it appears by a cer- "tificate of the Acting Secretary of State "that application was made in due form by "the charge d'affaires of Russia, accredited "to this government, for the arrest of Grin, "alleged to be a fugitive from the justice of "Russia. This, however, was entirely inde- "pendent of the proceedings before the mag- "istrate, which might have been instituted "by any person making a complaint under "oath and acting by the permission or au- "thority of the Russian government. While "Art. VII. undoubtedly contemplates a prior "certificate of the Secretary of State, the lan- "guage of the article is merely permissive, "and does not compel the production of such

"certificate before the warrant can be is-
"sued.

"It might readily happen that the foreign "representative might have no knowledge of "the facts necessary to be embodied in a "complaint, and have no documentary evi-"dence then at hand to prove them. In such "case if a complaint could not be made by a "private person, having knowledge of the "facts, the surrender might easily be de-"feated by the flight of the accused."

POINT II.

The appellant contends that there is no evidence to establish that he is the person accused of the alleged crimes.

In the Russian documents introduced in evidence in behalf of the demanding Government, the following description of the appellant is contained:

"Leiba—Levek Pinkusov Gliksman, 45 years "of age, a Jew, permanent inhabitant of the "City of Novoradomsk, temporarily resided "in the City of Lodz, married, of medium "height, brown hair, dark eyes, round face, "thick set, wears beard and moustache, has "no peculiar marks; a photograph of Glicks-"man is hereto attached." (Record, p. 35.)

This statement is part of the resolution or order of the Judicial Inquirer made on July 24th, 1910, and bears the seal of such Judicial Inquirer.

The photograph was contained in a sealed envelope attached to the original papers by seal, and the envelope was opened by the Commissioner in the presence of the appellant and his counsel. On the photograph is endorsed the following:

> "Photographic card of Lewek Pinkusov "Glicksman and bears the seal of the Judi- "cial Inquirer." (Record, p. 23.)

This was conceded by counsel for the appellant to be a correct translation of the endorsement on the photograph and bore the seal of the Judicial Inquirer.

The testimony of the witness Rinck shows that he met the appellant upon his arrival in this country. Upon his arrival in this country on the Steamer Rhein on August 3rd, 1910, Glicksman was accompanied by his wife and three children and was entered on the list of passengers under the name of Lewek Glicksman. At that time he admitted to the witness that a typographical error had been made and that his name was Lewek Gliksman and that he had come to visit his brother Harry Gliksman. He also admitted that he came from Lodz, Russia, and that he had been engaged at Lodz, in the leather business. It further appears that at the time of his arrival he wore a full beard, but after being permitted by the authorities at Ellis Island to land, he changed his personal appearance first by removing his beard and wearing only a goatee and later removing the goatee and wearing a moustache. (Record, pp. 12-14.) After landing in this country he went to work and engaged in the leather business. (Record, p. 24.)

It appears from the testimony of the witness Rinck, that not only did the appellant admit his identity, but that he had a passport made out in his name. The witness has been a detective for more than eighteen years, having ample experience in locating and discovering persons from photographs and identifications. He has identified the photograph attached to the original documents as that of the accused as he saw him at the time of his arrival and also at the time of his arrest and at the time of the hearing before the Commissioner. (Record, pp. 12-4.)

Upon the cross-examination by the appellant's counsel, the witness's description of the appellant tallies exactly with that contained in the original papers except that he thought the accused was not as old as stated in the papers. There can be no dispute that in all other respects, the description of the accused is identical with that contained in the original papers and it was not contended before the commissioner or before the learned United States Circuit Judge that the photograph attached to the original papers and the description therein contained was not that of the appellant. The appellant was before the Commissioner and before the learned United States Judge on the return of the writ of habeas corpus, they had ample opportunity to satisfy themselves as to the identity of the appellant and they both concluded that he was the person charged in the papers with the commission of the crimes.

The question of a man's age is purely a matter of opinion upon which, perhaps men would seldom agree. A man with a full beard would generally appear older than a man of the same age with a clean shaven face or with only a moustache.

The witness Reed, the United States Marshall who made the arrest, also saw the appellant upon his arrival in the United States and identified him as the man whose photograph was attached to the original papers. He also testified to the appearance of the appellant upon his arrival and the change which had taken place prior to his arrest and arraignment before the Commissioner. (Record, p. 26.)

There would seem to be little doubt that the evidence submitted by the demanding Government as to the identity of the accused established the fact that he is the person for whose extradition this application is made.

In connection with this matter and in support of the statement that the accused is the person for whose extradition demand is made, and that he is probably guilty of the offences charged, it will be observed that upon his arrest by the United States Marshal both he and his brother, who was with him, attempted to bribe the Marshal and the witness Rinek to permit him to go free. (Record, pp. 15-17-26.) Does not this act of attempted bribery on the part of the appellant and his brother, his admissions and statements upon his arrival in this country, his changes of personal appearance after learning that charges had been made against him, reasonably lead to the conclusion that he is the person mentioned and described in the original papers?

In addition, it must be remembered that no attempt was made to offset the testimony as to the identity of the appellant nor to show that he was not the person described in the papers and whose protograph was attached.

On the contrary the accused when offered an opportunity to make a statement as to his identity *refused* to do so (fol. 25).

POINT III.

The appellant's contention that no evidence has been introduced to substantiate the charges made, wholly lacks foundation.

It is submitted that the depositions offered in evidence are duly authenticated and proper to be received in evidence in support of the charges made against the accused.

The certificate of the United States Ambassador at St. Petersburg attached to the original papers is the usual certificate attached to papers for use in similar proceedings and strictly and fully complies with all the requirements of the Statute.

The treaty provides "that the application for extradition shall be accompanied by * * * * * authenticated copies of the depositions or declarations," and it is clear that the testimony in either form must be received. The depositions and other papers having been certified and authenticated by the chief diplomatic officer of our Government in the Russian Empire are conclusive.

It is provided in Section 5 of the Act of August 3rd, 1882, 22 Statutes 216,

> "That in all cases where any depositions, "warrants, or other papers or copies thereof

"shall be offered in evidence upon the hear-
"ing of any extradition case under Title
"sixty-six of the Revised Statutes of the
"United States, (secs. 5270 and 5271), such
"depositions, warrants and other papers or
"the copies thereof, shall be received and ad-
"mitted as evidence on such hearing for all
"the purposes of such hearing, if they shall
"be properly and legally authenticated so as
"to entitle them to be received for similar
"purposes by the tribunals of the foreign
"country from which the accused party shall
"have escaped, and the certificate of the
"principal diplomatic or consular officer of
"the United States resident in such foreign
"country shall be proof that any deposition,
"warrant or other paper or copies thereof
"so offered, are authenticated in the manner
"required by this act."

From an examination of the depositions offered in evidence it appears that the appellant was engaged as a leather merchant in the City of Lodz in the Empire of Russia and that in the month of June, 1910, he bought certain leather goods of one JUDKA SELMANOV BIERENZWEIG and gave in part payment a note for one hundred (100) rubles, to a merchant named MOSCHEK LEIBA TUGENDRIACH who resided in OZORKOV and that the signature to said note was a forgery. The witness accused the appellant of having drawn the note and of forging the signature of said merchant and also accused the appellant of uttering said instrument. The alleged forged note or bill was produced and identified by the witness.

The deposition of the witness BINEM BENZABILEV FRAIDENRAICH is of the same tenor. In the month of June, 1910, the appellant purchased goods from him and paid for the same by giving

a note alleged to have been drawn by MOSCHEK LEIBA TUGENDRIACH of OZORKOV. That said note or bill was for one hundred (100) rubles and that the signature thereto was forged. The witness also charges the appellant with having forged the same and with having uttered said instrument. He also produced the alleged forged note or bill before the Judicial Inquirer.

The testimony of the witness MOSCHEK LEIB J. M. TUGENDRIACH whose deposition is attached to the original papers shows that he is a merchant of OZORKOV, RUSSIA, engaged in the leather business for over twenty-eight years.

The notes which the appellant is charged with having forged and uttered were presented to him and he pronounced the signatures to them as spurious and as not made by him and he charged the appellant with having forged his name and having uttered said notes. It also appears from the testimony of all the witnesses that shortly thereafter, the appellant disappeared from Lodz and the testimony shows that he arrived in the United States on August 3rd, 1910, shortly after his disapperance from Russia.

There is also attached to the original papers the resolution or indictment charging the appellant with the commission of the crimes charged and asking for the apprehension of the appellant. There is also a resolution which is the equivalent of a warrant requesting that said Gliksman be taken into custody to answer to the charges made. It thus clearly appears that there was before the Commissioner, evidence charging the appellant with the forgery of two bills of exchange or notes and also charging the appellant with having uttered such bills or notes.

POINT IV.

There was ample evidence before the Commissioner to justify him in holding the accused for extradition.

In re Herres, 33 Fed. Rep. 167, Justice Brewer writing the opinion of the Court says:

> "Finally, I might observe, with reference "to these extradition proceedings, that the "substance, and not the form, should be the "main object of inquiry, and that they should "not be conducted in any technical spirit with "a view to prevent extradition. While the "Courts should review the proceedings to see "that no extradition is consummated upon a "mere pretext, or to subserve private mat-"ters, yet, if it appears that a crime has been "committed, and probable that the accused "has fled to this country for refuge, then a "spirit of fairness, expecting that the foreign "country will treat extradition proceedings "from this country in the same spirit, requires "that we act reasonable and justly, having "reference more to the substance than to the "form of the proceedings. Between Gov-"ernments, as between individuals, the golden "rule is both wise and sound."

It is submitted that upon this appeal the Court will not go behind the commitment of the Commissioner and the determination of the United States Circuit Court to ascertain whether there was sufficient evidence before the Commissioner. It is well settled that the writ of habeas corpus cannot perform the functions of a writ of error and that the Court will not go behind the commitment to ascertain whether there was sufficient evidence to justify the holding of the accused. All

that is required before the Commissioner is to show that a crime has been committed and that there is reasonable ground to believe that the accused is the person who committed it.

As was stated by this Court in Grin against Shine 187 U. S. 181, at page 192.

> "The sufficiency of such evidence to estab-
> "lish the criminality of the accused for the
> "purposes of extradition cannot be reviewed
> "upon habeas corpus. In re Luiz Oteizo,
> "136 U. S. 33."

As was said by the Court below citing from Matter of Sternaman, 77 Fed. Rep. 595.

> "The facts and circumstances proved au-
> "thorized conflicting presumptions and prob-
> "abilities as to her guilt or innocence and it
> "was the province of the Commissioner to
> "determine their import and whether they
> "are such as to justify him in exercising his
> "power to commit her to custody pending
> "the action of the Department of State. No
> "useful purpose would be subserved by an
> "analysis or discussion of the evidence."

The learned Court below then proceeds.

> "It will be seen that, from the very nature
> "of the proceeding, it is often impossible to
> "obtain evidence necessary to sustain a con-
> "viction upon the trial of an indictment.
> "Such proof is not required. It is enough
> "that there is some evidence to warrant the
> "commissioner in holding the accused person.
>
> "A confused mass of papers, some com-
> "petent and others incompetent, have been
> "submitted, without index or systematic ar-
> "rangement of any kind. I have read all
> "having any bearing upon the controversy
> "and think they contain some proof to estab-
> "lish the following propositions:

"1. That in the summer of 1910 forged "papers were uttered by a leather merchant "residing at Lodz in Russia, named Leiba "Gliksman.

"2. That these papers were given in ex- "change for merchandise, the name of "Moschek-Leiba Tugendreich being forged "thereon.

"3. That the person who committed the "forgery disappeared from Lodz prior to "July 24, 1910.

"4. That Leiba Pincusov Glucksman, a "leather merchant formerly living at Lodz, "Russia, arrived at the Port of New York "early in August, 1910.

"5. That the person so arriving in New "York, except in the matter of age, he being "apparently less than forty-five years old, "answers the description sent from Russia of "the person who forged the instruments.

"6. That the photograph attached to the "papers sent from Russia is a photograph of "the prisoner."

(Record, page 40.)

POINT V.

The claim that the appellant must be discharged because the complaint charges the accused with having forged and uttered forged bills of exchange, whereas the proof shows that he had forged and uttered forged notes is altogether untenable in an extradition case.

It is difficult to perceive wherein the interests of the appellant have been prejudiced because the complaint charged him with the commission of the crimes of forgery of bills of exchange, whereas the depositions in evidence refer to the forged instruments as commercial notes. The translation attached to and which forms part of the original papers authenticated by the United States Ambassador mentions the instruments forged as being bills of exchange. In Russia, the expression contained in the papers may mean commercial instruments such as bills of exchange or notes. However, whether the instruments forged and uttered be notes or bills of exchange would seem to be immaterial so long as the crime mentioned by the Treaty is set forth and the person accused is fairly apprised of the charges. It must be borne in mind that the crimes provided for are "forgery; and the utterance of forged papers."

The Treaty between the United States and Russia provides for the extradition of persons convicted of or charged with the commission of

certain crimes and among the crimes enumerated in Article 2 are the following:

> "5. Forgery; and the utterance of forged "papers, including public, foreign or governmental acts."

Counsel for the appellant is apparently laboring under the impression that the present proceeding is in the nature of a trial of the accused and that the complaint upon which the accused has been held is to be taken as an indictment and that the complaint should be drawn with all the particularity of an indictment. In this, however, he is in error. It is submitted that in extradition proceedings all that is required is that the charges contained in the complaint shall be such as to fairly apprise the accused of their nature.

The Treaty provides for the extradition of persons charged with "forgery and the utterance of forged papers." These crimes also are punishable under the laws of the State of New York and are defined in the Penal Code, Sections 880 *et seq.* The crimes charged are clearly within the meaning and intent of the Treaty and would constitute the crimes of forgery if committed within the State of New York or the United States.

In passing upon the contention of counsel for the appellant, the learned Court below in dismissing the writs of habeas corpus and certiorari said:

> "I do not overlook the argument of counsel "that the commercial paper which was "forged is referred to indiscriminately as "'notes' and 'bills of exchange.' In my view "this is wholly immaterial. Even in this "country such papers are often referred to "as notes or bills. Such exact nicety of de-

"scription as is argued by counsel for the "prisoner is not required in a preliminary "proceeding of this character.

"The papers which were forged being suffi- "ciently described, it makes no *difference* "what name is applied to them. It is a crime "to forge and utter any piece of commercial "paper, whether it be called a bill or a note "and whether the sum named therein be "large or small.

"As before observed, this is not a trial "upon an indictment, but a preliminary pro- "ceeding, the object of which is to bring the "offender before a court having jurisdiction "to try and punish him. Proof that the "prisoner uttered a single forged note or bill "of exchange is sufficient to justify his ex- "tradition."

(Record, page 40.)

In Pierce *vs.* Creecy, 210 U. S., page 401, the Court says:

"The counsel for the petitioner disclaim "the purpose of attacking the indictment as "a criminal pleading, appreciating correctly "that the point here is not whether the in- "dictment is good enough, over seasonable "challenge, to bring the accused to the bar "for trial. Counsel concede that they can- "not successfully attack the indictment ex- "cept by showing that it does not charge "a crime. The distinction between these two "kinds of attack, though narrow, is clear. "But it will not do to disclaim the right to "attack the indictment as a criminal plead- "ing and then proceed to deny that it con- "stitutes a charge of crime for reasons that "are apt only to destroy its validity as a "criminal pleading. There must be objec- "tions which reach deeper into the indict- "ment than those which would be good "against it in the court where it is pending.

"We are unable to adopt the test suggested "by counsel, that an objection, good if taken "on arrest of judgment, would be sufficient "to show that the indictment is not a charge "of crime. Not to speak of the uncertainty "of such a test in view of the varying prac- "tice in the different States, there is nothing "in principle or authority which supports "it. Of course, such a test would be utterly "inapplicable to cases of a charge of crime "by affidavit, which was held to be within the "Constitution (In the Matter of Strauss, 197 "U. S. 324). The only safe rule is to aban- "don entirely the standard to which the in- "dictment must conform, adjudged as a "criminal pleading, and consider only "whether it shows satisfactorily that the "fugitive has been in fact, however inarti- "ficially charged with crime in the State from "which he has fled. Roberts v. Reilly, 116 "U. S. 80, 95; Pearce v. Texas, 155 U. S. 311, "313; Hyatt v. Corkran, 188 U. S. 691, 709; "Munsey v. Clough, 196 U. S. 364, 372; "Davise's Cases, 122 Massachusetts, 324; "State v. O'Connor, 38 Minnesota, 243; State "v. Goss, 66 Minnesota, 291; Matter of Voor- "hes, 32 N. J. L. 141; Ex parte Pearce, 32 "Tex. Crim. 301; In re Van Sciever, 42 Na- "braska, 772; State v. Clough, 71 N. H. 594.

* * *

"This court, in the cases already cited, has "said, somewhat vaguely, but with as much "precision as the subject admits, that the "indictment, in order to constitute a suffi- "cient charge of crime to warrant interstate "extradition, need show no more than that "the accused was substantially charged with "crime. This indictment meets and sur- "passes that standard, and is enough. If "more were required it would impose upon "courts, in the trial of writs of habeas cor- "pus, the duty of a critical examination of "the laws of the States with whose jurispru-

"dence and criminal procedure they can have
"only a general acquaintance. Such a duty
"would be an intolerable burden, certain to
"lead to errors in decision, irritable to the
"just pride of the States and fruitful of mis-
"carriages of justice. The duty ought not
"to be assumed unless it is plainly required
"by the Constitution, and, in our opinion,
"there is nothing in the letter or the spirit
"of that instrument which requires or per-
"mits its performance."

In the case of Whitten v. Tomlinson 160 U. S. 231, it was held that when the Court in which the indictment was found had jurisdiction of the offence it is sufficient to make it the duty of the Courts of the United States to decline interposition by writ of *habeas corpus* and to leave the question of the lawfulness of the detention of the prisoner, in the State in which he was indicted, to be inquired into and determined, in the first instance by the Court of the State.

In the opinion it is said:

"The power (the right to grant writs of
"*habeas corpus*) thus granted to the Courts
"and Judges of the United States clearly
"extends to prisoners held in custody under
"the authority of a State, in violation of the
"Constitution, laws or treaties of the United
"States. But in the exercise of this power
"the Courts of the United States are not
"bound to discharge by writ of *habeas cor-*
"*pus* every such prisoner. * * *

"When the court in which the indictment
"was found has jurisdiction of the offence,
"(which there is nothing in this case to im-
"pugn), is sufficient to make it the duty of
"the Courts of the United States to decline
"interposition by writ of *habeas corpus*, and
"to leave the question of the lawfulness of
"the detention of the prisoner in the State

"in which he was indicted, to be inquired into "and determined, in the first instance, by "the Courts of the State, which are empow- "ered and obliged, equally with the Courts "of the United States, to recognize and up- "hold the supremacy of the Constitution and "laws of the United States. *Robb v. Con- "nolly*, 111 U. S. 642, *Ex parte Reggell*, 114 "U. S. 642; *Roberts v. Reilly*, 116 U. S. 80; "*Cook v. Hart*, 146 U. S. 183; *Pearce v. "Texas*, 155 U S. 311. * * *

"There could be no better illustration "than this case affords of the wisdom, if not "necessity, of the rule, established by the "decisions of this court, above cited, that "a prisoner in custody under the authority "of a State should not, except in a case of "peculiar urgency, be discharged by a court "or judge of the United States upon a writ "of *habeas corpus*, in advance of any pro- "ceedings in the courts of the State to test "the validity of his arrest and detention. To "adopt a different rule would unduly inter- "fere with the exercise of the criminal juris- "diction of the several States, and with the "performance by this court of its appropri- "ate duties."

In Ex Parte Reggel, 114 U. S. 650.

"Another proposition advanced in behalf "of appellant is, that the indictment which "accompanied the requisition does not suf- "ficiently charge the commission of any "crime; of which fact it was the duty of the "governor of Utah to take notice, and which "the court may not ignore in determining "whether the appellant is lawfully in cus- "tody. In connection with this proposition, "counsel discusses, in the light of the ad- "judged cases, the general question as to the "authority of a court of the State or Terri- "tory, in which the fugitive is found, to dis-

"charge him from arrest, whenever in its "judgment, the indictment, according to the "technical rules of criminal pleading, is de- "fective in its statement of the crime "charged. It is sufficient for the purposes of "the present case to say that, by the laws of "Pennsylvania, every indictment is to be "deemed and adjudged sufficient and good in "law which charges the crime substantially "in the language of the act of assembly pro- "hibiting its commission and prescribing the "punishment therefor, or, if at common law, "so plainly that the nature of the offence "charged may be easily understood by the "jury; and, that the indictment, which accom- "panied the requisition of the governor of "Pennsylvania, does charge the crime sub- "stantially in the language of her statute. "That Commonwealth has the right to estab- "lish the forms of pleadings and process to "be observed in her own courts, in both civil "and criminal cases, subject only to those "provisions of the Constitution of the United "States involving the protection of life, lib- "erty and property in all the States of the "Union."

In Roberts *v.* Reilly, 116 U. S. 96-97, it is said:

"The objections taken in this proceeding "to the sufficiency of the indictment, which "were overruled both in the District and Cir- "cuit Courts, and which are still relied on "here, are not well founded. The indictment "itself is certified by the governor of New "York to be authentic and to be duly au- "thenticated, which is all that is required by "the act of Congress. It charges a crime un- "der and against the laws of that State. It "is immaterial that it does not appear that a "certified copy of such laws was furnished to "the governor of Georgia. The statute does "not require it, and the governor could have "insisted, and it is to be presumed did in-

"sist, upon the production of whatever he "deemed necessary or important properly to "inform him on the subject. And the courts "of the United States, to whose process the "relator has appealed, take judicial notice of "the laws of all the States.

"The indictment in question sufficiently "charges the substance of a crime against "the laws of New York."

In *ex parte* Sternaman, 77 Fed. Rep. 595, the Court says:—

"The Commissioner having held the peti- "tioner upon the merits and the court being "of the opinion that his action in this regard "was clearly right, it was suggested at the "argument that ruling in her favor upon the "jurisdictional question would not avail the "petitioner, but would result in a new war- "rant being issued based upon the ample "proof now before the Commissioner. It was "thought that such a result would be produc- "tive of expense, delay and annoyance to all "concerned without any apparent advantage "to the petitioner.

"There is no pretense that she has been "misled in any way or that the proceedings "would have taken a different course if the "complaint had been drawn to obviate all of "the objections now advanced. So far as ap- "pears the examination was absolutely fair "to the petitioner, every opportunity to de- "velop her defense being accorded her. The "Court should not at this late day make a "ruling which will render nugatory this long "and arduous investigation and compel the "evidence to be taken *de novo*, without being "convinced that the complaint is fatally de- "fective. * * * *

"The complaint should set forth clearly "and briefly the offense charged. It need not "be drawn with the formal precision of an

"indictment. If it be sufficiently explicit to "inform the accused person of the precise "nature of the charge against him it is suf- "ficient. The extreme technicality with "which these proceedings were formerly con- "ducted has given place to a more liberal "practice, the object being to reach a correct "decision upon the main question—is there "reasonable cause to believe that a crime has "been committed? The complaint may, in "some instances, be upon information and "belief. The exigencies may be such that the "criminal may escape punishment unless he "is promptly apprehended by the represen- "tatives of the country whose law he has vio- "lated. From the very nature of the case it "may often happen that such representative "can have no personal knowledge of the "crime. If the offense be one of the treaty "crimes and if it be stated clearly and ex- "plicitly so that the accused knows exactly "what the charge is, the complaint is suf- "ficient to authorize the commissioner to "act."

In Grin *vs.* Shine, 187 U. S. 181, which was an extradition proceeding under the same treaty between the United States and Russia and in which the questions involved herein, were discussed by the Court, it was held that a complaint in an extradition case need not set forth the crime with the particularity of an indictment and that it was sufficient if it fairly apprised the party of the crime of which he is charged. In its opinion in that case the Court says:—

"These treaties should be faithfully ob- "served and interpreted with a view to fulfill "our just obligations to other powers, without "sacrificing the legal or constitutional rights "of the accused.

> "In the construction and carrying out of "such treaties the ordinary technicalities of "criminal proceedings are applicable only to "a limited extent. Foreign powers are not "expected to be versed in the niceties of our "criminal laws, and proceedings for a sur- "render are not such as put in issue the life "or liberty of the accused. They simply de- "mand of him that he shall do what all good "citizens are required, and ought to be will "ing to do, viz., submit themselves to the laws "of their country. Care should doubtless be "taken that the treaty be not made a pretext "for collecting private debts, wreaking indi- "vidual malice, or forcing the surrender of "political offenders; but where the proceed- "ing is manifestly taken in good faith a tech- "nical non-compliance with some formality "of criminal procedure should not be allowed "to stand in the way of a faithful discharge "of our obligations. Presumably at least, no "injustice is contemplated, and a proceeding "which may have the effect of relieving the "country from the presence of one who is "likely to threaten the peace and good order "of the community, is rather to be welcomed "than discouraged."

It is respectfully contended that the complaint in this case fairly apprised the accused of the nature of the charge against him. The crime provided for in the treaty is "forgery" and it can make no difference whether the documents forged were checks, notes, or bills of exchange. The complaint charged the forgery of commercial instruments and the proof showed the forgery of commercial instruments.

This record contains the usual *prima facie* evidence sufficient in extradition cases and any argument as to its insufficiency comes some twenty

years too late, the law as to extradition procedure being now so established as to form practically a closed chapter.

The appellant's contentions are necessarily reiterations of arguments, which repeated decisions have relegated to the limbo of the obsolete and rudimentary.

We respectfully submit that the judgment of the U. S. Circuit Court for the Southern District of New York should be affirmed.

Dated, New York, March 28, 1911.

FREDERIC R. COUDERT,
CHARLES A. CONLON,
Counsel for Appellees,
2 Rector Street,
New York City, New York.

GLUCKSMAN *v.* HENKEL, UNITED STATES MARSHAL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 944. Argued April 6, 7, 1911.—Decided May 29, 1911.

While a person is not to be sent from this country on mere demand or surmise, this Government should respond to a request for extradition if there is reasonable ground to suppose the accused to be guilty of an extraditable crime, even if presented in untechnical form; good faith demands this much in carrying out an extradition treaty.

Courts are bound by the existence of an extradition treaty to assume that the trial in the demanding State will be fair.

Where a magistrate of a demanding State certifies of his own knowledge to the identity of photographs, the courts of this country will presume in extradition proceedings that he had reason for so doing.

In this case *held* that although the presentation was untechnical it was sufficient to justify surrender.

Where the complaint calls the instruments alleged to have been forged bills of exchange and the evidence showed they were promissory notes the variance will not defeat surrender where the instruments are identified and there is a plain charge of forgery.

If an extraditable crime under the law of the State where the accused is found is sufficiently charged, the effect of variance between complaint and proof is a matter to be decided on general principles irrespective of the law of that State. *Wright* v. *Henkel*, 190 U. S. 40; *Petit* v. *Walshe*, 194 U. S. 205, distinguished.

Even though the complaint be sworn to on information and belief, if it is supported by testimony of witnesses stated to have deposed, the court will presume that they were sworn and the complaint is sufficient. *Rice* v. *Ames*, 180 U. S. 371.

THE facts are stated in the opinion.

Mr. Chas. Dushkind for appellant:

A writ of *habeas corpus* cannot perform the functions of

a writ of error; nevertheless this court will go behind the commitment to ascertain whether there was any legal evidence to give the Commissioner jurisdiction, since in the absence of some legal proof the Commissioner has no jurisdiction. Art. 1, Treaty with Russia; *Terlinden* v. *Ames*, 184 U. S. 541.

The laws of the State where the fugitive is found and not the acts of Congress are to govern in such cases. *Wright* v. *Henkel*, 190 U. S. 61; *Pettit* v. *Walshe*, 194 U. S. 205.

In New York the magistrate has no jurisdiction and cannot act unless there is some competent legal proof to establish a probable cause. *People* v. *Wells*, 57 App. Div. 140; Church, Hab. Corp. p. 319; *Ex parte Jenkins*, Fed. Cas. No. 7259; *In re Henry*, 35 N. Y. Supp. 210; *Perkins* v. *Moss*, 187 N. Y. 410; *Ex parte Swartwout*, 4 Cranch, 75.

The prisoner traversed the return and hence the court can properly review the evidence to ascertain whether there was any legal evidence upon which the Commissioner could act. There is no legal evidence in the case at bar to show that a crime has been committed.

There is no legal proof in the case at bar establishing the identity of the prisoner, but on the contrary the evidence shows affirmatively that the prisoner is not the man who is alleged to have committed the crime.

The photographs were not properly authenticated as evidence by certificates of the consul. *In re Henrich*, 5 Blatchf. 414; *In re McPhun*, 30 Fed. Rep. 60.

Assuming that the evidence as to the criminality is sufficient the prisoner must be discharged because the complaint charges the accused with having forged and offered forged bills of exchange whereas the proof shows that he had forged notes. *Wright* v. *Henkel*, 190 U. S. 40, and *Pettit* v. *Walshe*, 194 U. S. 205. This case is to be governed by the laws of New York; and *People* v. *Geyer*, 196 N. Y. 367, is controlling on this point. See also *People* v.

Poucher, 30 Hun (N. Y.), 576; *Besck* v. *State*, 44 Texas, 620; Bishop on Statutory Crimes, 3d ed., § 346; *Hamilton* v. *State*, 28 Am. Rep. 653; *State* v. *Jim*, 3 Murph. 3; *Commonwealth* v. *Sweeney*, 1 Va. Cas. 151; *McAuly* v. *State*, 7 Yerg. 526; *Johnston* v. *State*, Mart. & Yerg. 129; *Johnson* v. *State*, 11 Oh. St. 324; *State* v. *Carr*, 16 So. Rep. 155; *State* v. *Cullins*, 72 N. Car. 144.

Under the treaty that requires an offense to be a crime in both countries, it is of course necessary that the laws of Russia should be proven to show that the forging or passing of a forged bill of exchange is a crime.

The complaints in extradition cases must describe the crime with some degree of accuracy in order that the accused may avail himself of the benefit of the rule of law that he cannot be tried for any other offense than that charged in the extradition proceedings. *United States* v. *Rauscher*, 119 U. S. 407; *Ex parte Hibbs*, 26 Fed. Rep. 431; Field, Extra., 107.

The complaint is likewise bad because it fails to set forth facts sufficient to constitute a crime. The complaint is insufficient and defective and should be dismissed under authority of *Rice* v. *Ames*, 180 U. S. 371; *Ex parte Lane*, 6 Fed. Rep. 38. *Grin* v. *Shine*, 187 U. S. 181, in no way qualifies or modifies the rule laid down. *Rice* v. *Ames*, *supra*. See *Ex parte M'Cabe*, 46 Fed. Rep. 368.

Without a sufficient complaint on oath there is no jurisdiction to issue the warrant. *In re Heilbonn*, 1 Parker, Crim. R. 436. See also *In re Farez*, 7 Blatchf. 345; *In re Henrich*, 5 Blatchf. 414; *Ex parte Lane*, *supra*; *In re Roth*, 15 Fed. Rep. 507; Whart., Confl. Law, § 848; Spear, Extradition, 250; 7 Am. & Eng. Ency. of Law, 623, and note.

The marshal's return to the writ is insufficient because it shows that both the warrant and the final commitment are of no legal force inasmuch as no crime is recited therein. *People* v. *Drayton*, 168 N. Y. 12.

This is an extraordinary proceeding and before a person within the jurisdiction of the United States is to be deprived of his liberty and sent four thousand miles away as a prisoner to stand trial upon a criminal charge the greatest caution should be exercised. *In re Extradition of Wedge*, 15 Fed. Rep. 866.

The papers in this case show that the real purpose of this proceeding is not the forgery charge, but that it had been instituted by creditors as a matter of personal spite, malice and vengeance. *Grin* v. *Shine*, 187 U. S. 133, 134.

The interpretation of statutes has always in modern times been highly favorable to the personal liberty of the subject, and should always remain so. *Murray* v. *Reg.*, 7 Q. B. 707; *United States* v. *Wiltberger*, 5 Wheat. 95.

Mr. Frederic R. Coudert, with whom *Mr. Charles A. Conlon* was on the brief, for appellees.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a proceeding by *habeas corpus* and certiorari to test the validity of a commitment of the appellant, Glucksman, for extradition to Russia. The Circuit Court dismissed the writs and remanded the prisoner, who thereupon appealed to this court. The complaint three times charges the forgery of the signature of one Tugendriach to bills of exchange for one hundred roubles, and following each such charge alleges the fraudulent utterance of bills for the same sum to merchants named Bierenzweig, Traidenraich and Selinsky, and obtaining goods from them of that value. This last is alleged to constitute the crime of uttering forged paper, although it is not expressly alleged that the bills fraudulently uttered were forged, as pretty plainly is meant. The ground of the appeal is that there is no sufficient evidence to warrant extradition on the charge.

It is common in extradition cases to attempt to bring to bear all the factitious niceties of a criminal trial at common law. But it is a waste of time. For while of course a man is not to be sent from the country merely upon demand or surmise, yet if there is presented, even in somewhat untechnical form according to our ideas, such reasonable ground to suppose him guilty as to make it proper that he should be tried, good faith to the demanding government requires his surrender. *Grin* v. *Shine*, 187 U. S. 181, 184. See *Pierce* v. *Creecy*, 210 U. S. 387, 405. We are bound by the existence of an extradition treaty to assume that the trial will be fair. The evidence in this case seems to us sufficient to require us to affirm the judgment of the Circuit Court.

According to the translation of the Russian documents accompanying the demand, Birenzweig, a merchant, 'deposed' on July 7, 1910, that the Lodz merchant, Leiba Glikeman, in the previous June endorsed to him in payment for goods a note for one hundred roubles purporting to be drawn by a Tugendreich who resides in Ozorkov; that a few days later he learned that Glikeman had left those parts and that he was confirmed by Tugendreich in his suspicion that the note was spurious. Fraidenreich, a merchant, deposed to like effect, giving the name of the purported drawer of the note as Moschek-Leiba Tugendreich. And so did Zelinsky. Birenzweig and Fraidenreich produced their notes. Moschek-Leiba Jakubov-Maerov Tugendreich deposed that he was a merchant in Ozorkov, that he never drew any notes in Glikeman's favor, that the signatures on the notes produced by Birenzweig and Fraidenreich represented a kind of imitation of his signature, and that the text of his notes was written by Glikeman, (with whom he had had dealings). There is no rational doubt that the evidence tends to show that Leiba Glikeman, a leather merchant of Lodz, forged notes of the above-named Tugendreich

and disappeared before July 7, 1910. The prisoner by his own admission was a leather merchant and came from Lodz, arriving in New York on or about August 3, 1910. When first arrested he said that he had enemies on the other side who were bringing these charges against him, and, as we think it appears, tried to bribe the officers to let him go. He also said that the spelling of his name Glucksman was a typographical error, that his name was Lewek Glicksman. The Russian magistrate sends a description of Leiba-Levek Pinkusov Glikeman, which is worthless, as such descriptions generally are, but adds certainty to the correspondence of the name of the person referred to in the proceedings in Russia, with that of the prisoner, and after the description the magistrate adds: "A photograph of Glikeman is hereto attached," with his seal on the card, and the photograph represents the prisoner. It is objected that there is no deposition that the photograph represents the party accused, and it may be that in other circumstances we should require further proof. But the magistrate in certifying as if of his own knowledge, presumably had some reason for doing so, and taking the convergence of the other facts mentioned toward the prisoner as the party accused, we cannot say that the Commissioner was wrong in finding the identity made out.

One or two subordinate matters need but a bare mention. The complaint speaks of bills of exchange, the evidence shows the forged instruments to have been promissory notes. The instruments are identified sufficiently and for this purpose no more is needed. Neither *Wright* v. *Henkel*, 190 U. S. 40, nor *Pettit* v. *Walshe*, 194 U. S. 205, indicates that because the law of New York in this case may determine whether the prisoner is charged with an extraditable crime, it is to determine the effect of such a variance between evidence and complaint. That is a matter to be decided on general principles, irrespec-

tive of the law of the State. The complaint is sworn to upon information and belief, but it is supported by the testimony of witnesses who are stated to have deposed and whom therefore we must presume to have been sworn. That is enough. *Rice* v. *Ames*, 180 U. S. 371, 375.

Judgment affirmed.